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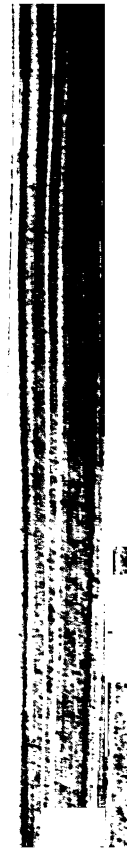
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A TREATISE

ON THE

POOR LAWS OF PENNSYLVANIA

BY

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Of the Northampton County Bar, and Author of
"Corporation Titles."

PHILADELPHIA

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PREFACE.

For nearly a quarter of a century the author has held the position of counsel for the Board of Poor Directors of his county. During this time he has often felt the need of a work on the poor laws in a more compact form than the various digests of the laws and decisions of the courts, covering nearly two hundred years of legislation.

Some years ago he commenced to arrange the decisions under the acts which had required judicial construction, and finally led to the present work.

As nearly all legislation in reference to the poor prior to the act of June 13, 1836, has been repealed, or rather embodied in the latter act, the plan adopted was to take that act section by section and under each give the decisions of the courts construing them, and in doing so the author has not confined himself to the courts of last resort, but has digested the cases of all the lower courts that he thought of any value.

There are instances where certain sections of the act of 1836 have been supplemented or modified to some extent by later legislation, and wherever it was possible these supplemental acts were placed immediately under the section meant to be modified.

It has been the object to compile a work which would, if possible, be complete in itself and relieve the reader or student of the necessity of resorting to the reports. In order to accomplish this, it was necessary, occasionally, to insert the same case, or at least portions of it under different sec-

tions, as for instance Section 9, which prescribes the different modes of gaining a settlement, and Section 16, which relates to orders of removal, both sections raise identical questions, and are governed by the same decisions, but for convenience should be kept separate.

He has also, in endeavoring to elucidate the different points decided by the courts, eliminated such matter from the opinion as had no direct bearing upon the question, but in doing so it was often difficult to draw the line, and has in many instances inserted the whole opinion at the risk of tiring the reader, rather than lose anything of value.

If this work will in any manner alleviate the labor of his brethren of the Bar, and aid those who are interested in the welfare of the poor, his object will have been accomplished.

HISTORY OF THE POOR LAWS OF PENNSYLVANIA.

For a history of the rise and progress of the poor laws, we refer the student to a little work, entitled, "The History of the Poor Laws, with Observations," by Richard Burn, LL. D., published in London, in 1764.

It is an exhaustive work, commencing with all the acts of Parliament, on the subject, as far back as the 43 Elizabeth; and followed with observations upon the statutes.

It then gives an account of various schemes for reforming the poor law by the most eminent men of that period (among whom we find the name of Lord C. J. Hale), and concludes by saying: "Thus hath the wisdom of the nation in Parliament, and of individuals, been employed for ages in providing properly for the poor, and yet they are not properly provided for."

The same difficulty has been encountered in our own laws, the sequel shows frequent changes, and while they are possibly as near right as human wisdom can make them, yet time, as it speeds on, will ever and anon turn up new objects in its course, requiring the attention of our lawmakers.

The earliest legislation on record, for the relief of the poor of Pennsylvania, was enacted by the Colonial Assembly A. D. 1700, and was entitled, "An act for the better provision for the poor."

This act was repealed by the act of February 7, 1705, entitled, "An act for the relief of the poor."

"An act imposing a duty on persons convicted of heinous crimes, and to prevent poor and impotent persons being im-

ported into the province of Pennsylvania," was passed February 14, 1729-30, 1 Dallas' Laws, 250.

Next follows the act of March 9, 1771, 1 Dallas's Laws, 569, which repeals and supplies all former acts relating to the poor, and was in its turn repealed by subsequent legislation, most sweeping of which is the act of June 13, 1836. This last act, by its forty-seventh section, repeals all laws altered or supplied, so far as they are inconsistent with it; there is, however, still a doubt whether some of the sections of the act of 1771 are not yet in force. Mr. Dunlop, in his "Laws of Pennsylvania," in a note commenting on the forty-seventh section, says: "How much those kind of repealing clauses leaves of the old law, it is difficult to declare. Judge Stroud has retained in his edition the fifteenth and thirty-third sections of the act of 1771. And I have also retained the sixteenth and twenty-first sections."

In view of the uncertainty expressed by these two eminent compilers, in reference to these sections, as well as the fact that the act of June 13, 1836, was largely taken from that of 1771, we have, for convenience of examination and comparison, given the latter act in full.

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POOR LAWS OF PENNSYLVANIA.

CHAPTER I.

ACT OF MARCH 9, 1771.

An Act for the relief of the poor. Passed March 9, 1771.¹

Whereas the laws hitherto made for the relief of the poor have not answered all the good purposes that were expected from them: Be it therefore enacted, That the Mayor or Recorder of the City of Philadelphia, with the Aldermen of said city, or any two of them, and the justices of the peace of the respective counties of this province, or any three of them, shall, on the twenty-fifth day of March, yearly and every year, unless the same shall happen on Sunday, and in such case on the day following, meet at some convenient place within the said city, and in the several counties respectively, and there nominate and appoint twelve substantial inhabitants of the said city, four of the Northern-Liberties, and four of the district of Southwark, and two of every Borough and other township within their respective jurisdictions, to be overseers of the poor of the said city, district, boroughs and townships; for which purpose the overseers going out of office shall, on the day aforesaid, return to the said magistrates and justices the names of twelve substantial inhabitants, or more, for the city, four or more for the said district, four or more for the said Liberties, and two or more for each borough and other township, out of which number successors in the said office shall be appointed by the said magistrates and justices for the ensuing year. And if any overseers shall refuse or neglect to make such return as aforesaid, he shall forfeit and pay

¹ 1 Sm. L. 332.

any sum not exceeding ten pounds. Provided always, That the overseer or overseers making such return shall give notice thereof, in writing, at least six days before the twenty-fifth day of March, to the person or persons, whose name or names are so to be returned; or leave the same at his or their dwelling house or place of abode. And if any overseer shall die, fail to make a proper return, remove, or become insolvent, before the expiration of his office, two of the said Aldermen or Justices respectively, on due proof being thereof made before them, may appoint another in his stead.

II. And be it further enacted, That every overseer so nominated and appointed shall, before he enters upon the execution of his office, take an oath or affirmation respectively, according to law, which any Alderman in the said city, or any justice in the county respectively, is hereby authorized and empowered to administer: That he will discharge the office of overseer of the poor truly, faithfully and impartially, to the best of his knowledge and ability.

III. And be it further enacted, That it shall and may be lawful for any two justices of the peace for the county, and the Mayor or Recorder and any two Aldermen of the city of Philadelphia, upon complaint to them by the managers elected by the contributors to the relief and employment of the poor in the city of Philadelphia, or by a majority of them, that a sum of money is wanting, or likely so to be, to support and employ the poor in the house of employment in the said city, to issue their warrant, under their hands and seals, directed to the overseers of the Poor of the said city, district of Southwark, and township of Moyamensing, Passyunk, and the Northern-Liberties, requiring them forthwith to levy, collect and raise, such and the same rate, by a joint assessment on all estates real and personal, and taxables, in the manner, and under the same penalties, within the said city, district and townships, hereinafter directed for levying, collecting and raising such rates in the several boroughs and other townships in this province, as to the said justices, and Mayor or Recorder and Aldermen, shall appear necessary for the purposes aforesaid. And if any of the said overseers shall neglect or refuse to levy, collect and raise the said rate, so ordered by the said justices, Mayor or Recorder and Aldermen, and to pay the same, after the charges arising from the reception and removal of their respective poor, and of collecting the said rate, are deducted, to the Treasurer of

the Corporation of contributors to the relief and employment of the poor in the city of Philadelphia, within two months after the receipt of such order or warrant, every such overseer, being thereof legally convicted, shall forfeit to the said corporation the sum of fifty pounds.

IV. And be it further enacted, That it shall and may be lawful to and for the overseers of the poor of the several boroughs and townships within this province (the townships of Moyamensing, Passyunk and the Northern-Liberties aforesaid, only excepted) having first obtained the approbation of any two justices of the peace in the same county, to make and lay a rate of assessment, not exceeding three pence in the pound at one time, upon the clear yearly value of all the real and personal estates within the said boroughs and townships respectively, and six shillings per head on every freeman, not otherwise rated for his estate, in every three penny tax, and so in proportion for any lesser rate or assessment; which said assessments may be repeated, by the authority aforesaid, as often in one year as shall be found necessary for the support of the poor, to be employed for providing proper houses and places, and a convenient stock of hemp, flax, thread, and other ware and stuff, for setting to work such poor persons as apply for relief, and are capable of working, and also for relieving such poor, old, blind, impotent and lame persons, and other persons not able to work, within said Boroughs and townships respectively, who shall therewith be maintained and provided for.

V. And be it further enacted, That it shall and may be lawful to and for the overseers of the poor of the said boroughs and townships to contract with any person or persons for a house or lodging for keeping, maintaining and employing, any or all such poor in said boroughs and townships respectively, as shall be adjudged proper objects of relief, and there to keep, maintain and employ all such poor persons, and to take the benefit of their work, labor and service, for and towards their maintenance and support; and if any poor person shall refuse to be lodged, kept, maintained and employed in such house or houses, he or she shall be put out of the book, and shall not be entitled to receive relief from the overseers during such refusal.

VI. And be it further enacted, That the overseers of the said boroughs and townships, in laying the said rates, shall be guided by the county assessment on other occasions,

having due regard to every man's estate within the borough or township so to be rated and assessed; and shall enter such rates fairly in a book, of which a fair duplicate, signed by them, shall be delivered to the justices, who shall allow the same, if they find it just and reasonable, without fee or reward, and shall permit any inhabitant to inspect the rates, at all seasonable times, without any fee or reward, and shall give copies, on demand, being paid at the rate of six pence for every twenty-four names; and if any overseer shall not permit any inhabitant to inspect, or shall refuse to give copies as aforesaid, he shall forfeit twenty shillings to the party grieved, to be recovered as debts under forty shillings are directed by law to be recovered.

VII. And be it further enacted, That if any person or persons, so rated or assessed in the said city or district, or any borough or township, shall refuse to pay the sum or sums on them charged, it shall and may be lawful to and for the said overseer or overseers (having first obtained a warrant, under the hand and seal of any magistrate of the said city, or any justice of the peace of the county respectively, where said assessment is made, who is hereby empowered to grant such warrant) to levy the same on the goods and chattels of the person or persons so refusing; and in case such person shall not, within three days next after such distress made, pay the sum or sums on him assessed, together with the charges of such distress that the said overseer or overseers may proceed to the sale of the goods distrained, rendering to the owner the overplus, if any, that shall remain on such sale, reasonable charges being first deducted. And in case such person or persons have no goods and chattels, whereby they may be distrained, it shall be lawful for the said justices, magistrate or justice respectively, to commit the offenders to prison, there to remain, without bail or main-prize, until they have paid the same. Provided always, That if any person or persons shall find him, her or themselves, aggrieved with such rate or assessment, it shall be lawful for the magistrates or justices of the peace, at their next General Quarter Sessions for the city or county respectively, upon petition of the party, to take such order therein, as to them should be thought convenient, and the same to conclude and bind all parties; and the overseers shall forbear to proceed in such sale, till the same be determined in the Quarter Sessions.

VIII. And be it further enacted, That it shall and may be lawful for the managers of the House of employment in the city of Philadelphia, or a majority of them, and the overseers of the poor of the Boroughs and townships aforesaid, by the approbation and consent of two or more magistrates of the said city, or two justices of the peace of the county, to put out as apprentices all such poor children, whose parents are dead, or shall be, by the said magistrates, or justices and managers, found unable to maintain them; males to the age of twenty-one, and females to the age of eighteen years.

IX. And be it further enacted, That no person or persons shall be admitted or entered in the poor book of the said house of employment, or of any of the said boroughs or townships, or receive relief, before such person or persons shall have procured an order from two magistrates or justices of the peace, for the same. And in case the said managers or overseers shall enter in their books, or relieve any such poor person or persons, without such order, they shall forfeit all such money or goods so paid or distributed, unless such entry and relief shall be approved of by two magistrates or justices as aforesaid.

X. And be it further enacted, That the overseers of the city of Philadelphia, the district of Southwark, and the townships of Northern-Liberties, Moyamensing and Passyunk, shall, on the twenty-fifth day of March in every year, or within six weeks after, render to the justices of the County of Philadelphia, and to the magistrates of the said city respectively, or to any three of them, the Mayor or Recorder being one, a just account in writing, fairly entered in a book to be kept for that purpose, and signed by them, of all sums by them received, or rated and not received, and of all money paid by such overseers, and of all other things concerning their office; which accounts, when settled, shall be signed by the said justices or magistrates, who shall have full power to allow such parts thereof only, as to them shall seem just and reasonable. And if any such overseer or overseers shall refuse or neglect to make and yield up such accounts within such time, or if any overseer or overseers, whose office that year expires, shall refuse or neglect to pay all the monies raised by assessments, which shall remain in their hands, after deducting the charges of

other monies, which shall remain in their hands, by fines, forfeitures or donations, to the Treasurer of the said Corporation of Contributors, and deliver up the said books, and everything in his or their hands, concerning the said office, to his or their successor or successors, or shall refuse or neglect to collect and pay to the Treasurer all such sums of money as are uncollected on the rate or assessment at the expiration of his or their office, which they are hereby enabled to collect by warrant under the hand and seal of any one magistrate within the said city, or justice within the said county, respectively, within six weeks after his or their going out of office, it shall and may be lawful to and for the said justices and magistrates respectively, or any three of them, to commit such overseer or overseers to the common gaol, there to remain, without bail or main-prize, till such overseer or overseers shall give such account, and pay and yield up such money, books and other things as they ought in manner aforesaid.

XI. And be it further enacted, That the freeholders of every borough and township in this province (except the townships of the Northern-Liberties, Moyamensing and Passyunk), shall meet together on the third Saturday in March yearly and every year, and choose by tickets in writing, three capable and discreet freeholders, to settle and adjust the accounts of the overseers of the poor of the respective boroughs and townships for the preceding year, and the person who shall have served the office of overseer shall, on the said day, or within fifteen days after, deliver and render to the said freeholders a just account in writing, entered in a book to be kept for that purpose, and signed by him, of all sums by him received, and also of all materials that have come to his hands during his office, or that shall be in his hands, or in the hands of any of the poor, to be wrought, and of the produce of the labor of the poor under his care, and of all money paid by such overseers, and of all other things concerning his office; which accounts when settled, shall be signed by the said freeholders, or any two of them, who shall have full power to allow such part thereof only, as to them shall appear just and reasonable. And the said overseers shall make fair entries in a book, of the names of all the poor within their respective boroughs and townships, with the time when each of them became chargeable, and of all certificates delivered to them, and by whom, with the times when the

same were delivered; for which trouble said freeholders, or any two of them, shall, on settling their accounts, make such allowances as they shall judge reasonable. And if any of the said overseers shall refuse or neglect to make and yield up such books and accounts, within the time as aforesaid, or if any such whose office shall expire shall refuse or neglect to pay over the money, and deliver up the books aforesaid, and every other thing in his hands, concerning his said office, to his successors, or shall refuse or neglect to collect and pay to such successors all such sums of money, as are uncollected on the rate or assessment at the expiration of his office (which he is hereby empowered to collect by warrant, to be issued under the hand and seal of any one justice of the peace in and for his respective county) within thirty days after his going out of office, it shall and may be lawful to and for any justice of the peace of the said county to commit such overseer to the common gaol, there to remain without bail or main-prize, till such overseer shall give such accounts, and pay and deliver up such money, books and other things, as he ought in manner aforesaid.

XII. Provided always nevertheless, That if any person shall think himself aggrieved by the settlement of his account by the said freeholders, he may (having first paid over to his successors the balance found in his hands, if any such there be) appeal to the next County Court of Quarter Sessions, who shall, on the petition of the party, take such order therein, and give such relief, as to them shall appear just and reasonable, and the same shall conclude all parties.

XIII. And be it further enacted, That the overseers of the poor of the boroughs and townships within the several counties of this province (except as before excepted) shall, at least five days before the third Saturday in March, yearly and every year, during the continuance of this Act, give public notice in writing, by affixing the same in four or more of the most public places in their respective boroughs and townships, of the place where the inhabitants and freeholders of the several boroughs and townships shall meet, to elect the freeholders aforesaid for each and every of the said boroughs and townships, according to the directions of this Act; which place, so appointed for the said election, shall be as near the centre of the respective boroughs and townships, as conveniently may be.

XIV. And be it further enacted, That if any person, ap-

pointed as overseer of the poor of the city of Philadelphia, shall refuse or neglect to take upon him the said office, he shall forfeit twenty pounds to the overseers of the poor of the said city, for the use of the poor thereof. And if any person, appointed as overseer of the poor of any borough, township or place, shall refuse or neglect to take upon him the said office, he shall forfeit five pounds to the overseers of the poor of the said borough, township or place, for the use of the poor thereof; and the said forfeitures shall be levied by warrant from any two justices of the County, or any two magistrates of the city of Philadelphia, respectively, under their hands and seals, on the goods and chattels of such person or persons so neglecting or refusing, and sold within three days next after such distress made; and if there happen overplus upon sale thereof, the same shall be paid to the owner or owners, reasonable charges being first deducted; and if such person or persons, so neglecting or refusing as aforesaid, shall not have goods and chattels, whereby he or they may be distrained as aforesaid, that then the said justices may commit the offender or offenders to prison, there to remain, without bail or main-prize, till the said forfeitures shall be fully satisfied and paid. And if any overseer shall remove, he shall before his removal, deliver over to some other overseer of the city, borough, township or place, from which he removes, his accounts as aforesaid, with all assessments, books, papers, money and other things concerning his office; and upon the death of any overseer, his executors or administrators shall, within forty days after his decease, deliver over all things concerning his office to some other overseer as aforesaid, and shall pay out of the assets all money remaining due, which he received by virtue of his office, before any of his other debts are paid.

XV. And be it further enacted, That all gifts, grants, devises and bequests, hereafter to be made, of any houses, lands, tenements, rents, goods, chattels, sum or sums of money, not exceeding in the whole, including all gifts, grants, devises and bequests, heretofore made, the yearly value of five hundred pounds, to the poor of any borough or township within this province (except the townships as before excepted) or to any person or persons for their use, by deed or by the last will and testament of any person or persons, or otherwise howsoever, shall be good and available in law, and shall pass such houses, lands, tenements, rents, goods and chattels, to

the overseers of the poor of such borough or township, for the use of their poor respectively.

XVI. And be it further enacted, That the said overseers of the poor for the city, boroughs, districts and townships aforesaid, for the time being respectively, shall forever hereafter, in name and in fact, be, and they are hereby declared to be bodies politic and corporate in law, to all intents and purposes, and shall have perpetual succession, and by the name of overseers of the poor of the said city, boroughs, district and townships, may sue and be sued, and plead and be impleaded, in all courts of judicature within this province; and by that name shall and may purchase, take and receive any lands, tenements or hereditaments, goods, chattels, sum or sums of money, not exceeding in the whole, including all gifts, grants, devises, and bequests, heretofore made, the aforesaid yearly value of five hundred pounds, to and for the use and benefit of the poor of the said city, or each of the said boroughs, district or townships, respectively, of the gift, alienation or devise, of any person or persons whomsoever, to hold to them, the said overseers, and their successors in the said trusts, for the use of the said poor, forever.

XVII. And be it further enacted, That if any person, who shall come to inhabit in the said city of Philadelphia, or in any borough, township or place, in this province, shall for himself, and on his own account, execute any public office, being legally placed therein, in the said city, borough, township or place, during one whole year; or if any person shall be charged with and pay his or her share towards the public taxes or levies for the poor of the said city, borough, township or place, for two years successively; or if any person shall really and *bona fide* take a lease of any lands or tenements in the said city, or in a borough, township or place, of the yearly value of ten pounds, and shall dwell in and upon the same for one whole year; and pay the said rent, or shall become seized of any freehold estate in any lands or tenements in the said city, or in any borough, township or place, in this province, and shall dwell in or upon the same for one whole year; or if any unmarried person, not having children or child, shall be lawfully bound or hired as a servant in the said city, or any of the boroughs, townships or places aforesaid, and shall continue and abide in such service during one whole year; or if any person shall be duly bound an appren-

borough, township or place, with his or her master or mistress, for one whole year ; such persons, in any of these cases, shall be adjudged and deemed to gain a legal settlement in the said city, borough, township or place respectively, where such person shall so execute an office, be charged with and pay taxes, take such lease, or own any such freehold estate, and dwell thereon, as aforesaid, or, being hired or bound, shall continue and inhabit in a place for one whole year, as aforesaid.

XVIII. And be it further enacted, That every indentured servant, legally and directly imported from Europe into this province, shall obtain a legal settlement in the city, borough, township or place, in which such servant shall first serve with his or her master or mistress the space of sixty days, and if afterwards such servant shall duly serve in any other place for the space of twelve months, such servant shall obtain a legal settlement in the city, borough, township or place where such service was last performed, either with his or her first master or mistress, or on an assignment ; and all mariners coming into this province, and every other healthy person, directly coming from Europe into this province, shall be legally settled in the city, borough, township or place, in which he or she shall first settle and reside for the space of twelve months.

XIX. And be it further enacted, That every married woman shall be deemed, during coverture, and after her husband's death, to be legally settled in the place where he was last legally settled ; but if he shall have no known settlement, then she shall be deemed, whether he is living or dead, to be legally settled in the place where she was last legally settled before her marriage.

XX. And be it further enacted, That if any person or persons, after the publication of this Act, shall come out of the city of Philadelphia, or any borough, township or place, into another borough, township or place, within this province, or shall come out of any borough, township or place, in this province, into the city of Philadelphia, there to inhabit and reside, and shall at the same time procure, bring and deliver unto the overseers of the poor of the city, borough, township or place, where he or she shall come to inhabit, a certificate, under the hands and seals of the overseers of the poor of the city, borough, township or place, from whence he, she or they removed, to be attested by two or more cred-

ible witnesses, thereby acknowledging the person or persons mentioned in the said certificate to be an inhabitant or inhabitants, legally settled in that city, borough, township or place, every such certificate, having been allowed of and subscribed by one or more justices of the peace of the city, or of the county where such borough, township or place, doth lie, shall oblige the said city, borough, township or place, to provide for the persons mentioned in the said certificate, together with his or her family, as inhabitants of that place, whenever he, she or they shall happen to become chargeable to, or be obliged to ask relief of the city, borough, township or place, to which such certificate was given, and into which he, she or they were received by virtue of the said certificate, and then, and not before, it shall and may be lawful for any such person, and his or her children, though born in the city, borough, township or place, and his and her servants and apprentices, not having otherwise acquired a legal settlement there, to be removed, conveyed and settled in the city, borough, township or place, from whence such certificate was brought and the witnesses who attest the execution of the certificate by the overseers, or one of the said witnesses, shall make oath or affirmation, according to law, before the justices who are to allow the same, that such witness or witnesses did see the overseers of the poor, whose names and seals are thereunto subscribed and set, severally sign and seal the said certificate, and that the names of such witnesses attesting the said certificate are of their own proper handwriting; which said justices shall also certify that such oath or affirmation was made before them; and every such certificate allowed, and oath or affirmation of the execution thereof so certified, by the said justices, shall be taken and received as evidence, without other proof thereof. And no person so coming by certificate in the said city, or any borough, township or place, nor an apprentice or servant to such person, shall be deemed or adjudged, by any act whatsoever, to have gained a legal settlement therein, unless such person shall, after the date of such certificate, execute some public annual office, being legally placed therein in the said city, borough, township or place.

XXI. And be it further enacted, That no person whatsoever, who shall come into any city, borough, township or place, without such certificate as aforesaid (mariners and other healthy persons coming from Europe as aforesaid ex-

cepted) shall gain a legal settlement therein, unless such person shall give security, if required, at his or her coming into the same, for indemnifying and discharging the said city, borough, township or place, to be allowed by any one magistrate or justice of the peace respectively.

XXII. And be it further enacted, That upon complaint being made by the overseers of the poor of the said city, to any one or more of the magistrates of the said city, or by the overseers of the poor of any borough, township or place, to one or more of the justices of the peace of the county, wherein such borough, township or place is situate, it shall and may be lawful to and for any two magistrates of the said city, or any two justices of the peace of the said county respectively, where any person or persons is or are likely to become chargeable to the said city, borough, township or place, in which he, she or they shall come to inhabit, by their warrant or order, directed to the said overseers, to remove and convey such person or persons to the city, borough, township, province or place, where he, she or they was or were last legally settled, unless such person or persons shall give sufficient security to discharge and indemnify the said city, borough, township or place, to which he, she or they is or are likely to become chargeable as aforesaid.

XXIII. Provided always, That if any person or persons shall think him, her or themselves aggrieved by any order of removal made by any of the said justices or magistrates, such person or persons may appeal to the justices of the peace, at their next general Quarter Sessions of the peace for the county, from whence such poor persons shall be removed, and not elsewhere, which said court shall determine the same; and if there be any defects of form in such order, the justices in the said sessions shall cause the same to be rectified and amended, without any costs to the party; and after such amendment, shall proceed to hear the truth and merits of the cause; but no such order of removal shall be proceeded upon, unless reasonable notice be given by the overseers of the city, borough, township or place, from which the removal shall be, the reasonableness of which notice shall be determined by the justices, at the Quarter Sessions to which the appeal is made; and if it shall appear to them, that reasonable time of notice was not given, then they shall adjourn the appeal to the next Quarter Sessions, and there determine the same.

XXIV. And be it further enacted, That for the more effectual prevention of vexatious removals and frivolous appeals, the justices in Session, upon any appeal concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such appeal to have been given by the proper officer to the overseers of the said city, or of any borough, township or place (though they did not afterwards prosecute such appeal) shall at the same Sessions order to the party, in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, such costs, and charges, as by the said justices, in their discretion, shall be thought most reasonable and just, to be paid by the overseers, or any other person, against whom such appeal shall be determined, or by the person that did give such notice; and if the person ordered to pay such costs and charges shall live out of the jurisdiction of said Court, any justice where such person shall inhabit shall, on request to him made, and a true copy of the order for the payment of such costs and charges, certified under the hand of the Clerk of the Court, by his warrant, cause the same to be levied by distress; and if no such distress can be had, shall commit such person to the common gaol, there to remain, without bail or main-prize, until he pays the said costs and charges. And if the said justices on such appeal shall determine in favor of the appellant, that such poor person was unduly removed, they shall at the same quarter sessions order and award to such appellant so much money, as shall appear to the said justices to have been reasonably paid by the city, borough, township or place, on whose behalf such appeal was made, towards the relief of such poor person, between the time of such undue removal and the determination of such appeal, with the costs aforesaid, the same money so awarded, and the costs to be recovered in the same manner as costs and charges awarded against an appellant are to be recovered by virtue of this act as aforesaid.

XXV. And be it further enacted, That if any housekeeper or inhabitant of this province shall, after the publication of this act, take into, receive or entertain in his or her house or houses, any person or persons whatsoever (all mariners coming into this province, and any other healthy person coming from Europe immediately into said province, only excepted) not being persons who have gained a legal settlement in some city, borough, township or place, within this

province, or shall not give notice in writing, which they are hereby required to do, within three days next after the taking into or entertaining any person or persons in his or her house, within the city of Philadelphia, to the overseers of the poor of the said city, and within ten days next after taking into or entertaining any person or persons in his or her house, in any borough, township or place, within this province, or to the overseers of the poor of the borough, township or place, where such person dwells, such inhabitant or house-keeper, being thereof legally convicted, by testimony of one credible witness, on oath or affirmation, before any one magistrate of the said city of Philadelphia, or before any one justice of the peace of the County where such person dwells, shall forfeit and pay the sum of twenty shillings for every offence, the one moiety for the use of the poor of the said city, borough, township or place respectively, and the other moiety to the informer, to be levied on the goods & chattels of the delinquents, in the manner hereinafter directed; and for want of sufficient distress, the offender to be committed to the work-house of the said City or county, there to remain, without bail or main-prize, for the space of ten days. And moreover, in case the person or persons so entertained or concealed shall become poor and unable to maintain him or herself, and cannot be removed to the place of his or her last legal settlement in any other province, if any such he or she hath, or shall happen to die, and not have wherewithal to defray the charges of his or her funeral, then, and in such case, the house-keeper or person convicted of entertaining or concealing such poor person, against the tenor of this act, shall be obliged to provide for and maintain such poor and indigent person or persons, and, in case of such poor person's death, shall pay the overseers of the poor so much money, as shall be expended on the burying of such poor and indigent person or persons; and upon refusal so to do, it shall be lawful for the overseers of the poor of the said city, borough, township or place respectively, and they are hereby required to assess a sum of money on the person or persons so convicted, from time to time, by a weekly assessment, for maintaining such poor and indigent person or persons, or assess a sum of money for defraying the charges of such poor person's funeral, as the case may be: And in case the party convicted shall refuse to pay the sum of money so assessed or charged to the overseers of the poor for the

uses aforesaid, the same shall be levied on the goods and chattels of the offender, in the manner hereinafter directed; but if such persons, so convicted, have no goods or chattels to satisfy the money so assessed for him or her to pay, that then it shall and may be lawful for the said Magistrates or justices to commit the offender to prison, there to remain without bail or main-prize, until he or she hath paid the same, or until he or she shall be discharged by due order of law.

XXVI. And be it further enacted, That if any person be removed by virtue of this act, from one county, city, borough, township or place, to another, by warrant or order, under the hands and seals of two justices of the peace or magistrates as aforesaid, the overseers of the poor of the city, borough, township or place, to which the said person shall be so removed, are hereby required to receive the said person; and if any of the said overseers shall refuse or neglect to do so, he or they so offending, upon proof thereof by one or more credible witnesses, upon oath or affirmation, before any one of the magistrates or justices of the peace of the city or county where the offender do reside, shall forfeit, for every such offence, the sum of five pounds, to the use of the poor of the city, borough, township or place, from which such person was removed, to be levied by distress and sale of the offender's goods, by warrant, under the hand and seal of the said magistrate or justice of the peace, which he is hereby required and empowered to make, directed to the constable of the city, borough, township or place, where such offender or offenders dwell, returning the overplus, if any be, to the owner or owners; and for want of sufficient distress, then the offender to be committed to the gaol of the county where he dwells, there to remain, without bail or main-prize, for the space of forty days.

XXVII. And whereas it often happens that poor persons, sometimes with certificates, and sometimes without, come from the city of Philadelphia into some township or place within this province, and from some place or township of this province into the said city of Philadelphia, or into some other township of this province, and conceal themselves until they become sick, or lame, and cannot be removed, or die before they can be removed, by reason whereof the inhabitants of the city, borough, township or place, where such poor person or persons fell sick, or died, are put to charges, without any means to relieve themselves from the payment of the

monies expended for the maintenance or burying of such poor person or persons: Be it therefore enacted, That if any poor person or persons shall come out of the city of Philadelphia into any Borough, township or place, within this province, or shall come out of any borough, township or place, within this province, in the city of Philadelphia, or any other township or place, within this province, and shall happen to fall sick, or die, before he or she have gained a legal settlement in the city, borough, township or place, to which he or she shall come, so that such person or persons cannot be removed, the overseers of the poor of the city, borough, township or place, into which such person or persons is or are come, or one of them, shall, as soon as conveniently may be, give notice to the overseers of the poor of the city, borough, township or place, where such person or persons had last gained a legal settlement, or to one of them, of the name, circumstances and condition of such person or persons; and if the overseers of the poor, to whom such notice shall be given, shall neglect or refuse to pay the monies expended for the use of such poor person or persons, and to take order for relieving and maintaining such poor person or persons, or in case of his, her or their death, before notice can be given, as aforesaid, shall, on request being made, neglect or refuse to pay the monies expended in maintaining and burying such poor person or persons, then, and in every such case, it shall be lawful for any two justices of the peace of the city or county where such poor person or persons were last legally settled, and they are hereby authorized and required, upon complaint made to them, to cause all such sums of money, as were necessarily expended for the maintenance of such poor person or persons, during the whole time of his, her or their sickness, and in case he, she or they die, for his, her or their burial, by warrant under their hands and seals, to be directed to some constable of the city or county respectively, to be levied by distress and sale of the goods and chattels of the said overseer or overseers of the poor, so neglecting or refusing, to be paid to the overseer or overseers of the city, borough, township or place, where such poor person or persons happened to be sick, or to die, as aforesaid, and the overplus of the monies arising by sale of such goods, remaining in the constable's hands after the sum of money ordered to be paid, together with the costs of distress, are satisfied, shall be restored to the owner or owners of the said goods.

XXVIII. Provided always, That if any of the said overseers shall think him or themselves aggrieved by any sentence of such justices, or by their refusal to make any order, as is aforesaid, he or they may appeal to the justices of the peace, at their next court of Quarter Sessions for the county where such justices reside, and not elsewhere, who are hereby authorized and required to hear, and finally to determine the same.

XXIX. And be it further enacted, That the father and grandfather, and the mother and grandmother, and the children of any poor, old, blind, lame and impotent persons, or other poor person, not able to work, being of sufficient ability, shall, at their own charge, relieve and maintain every such poor person, as the magistrates or the justices of the peace, at their next general quarter Sessions for the city or county where such poor persons reside, shall order and direct, on pain of forfeiting forty shillings for every month they shall fail therein.

XXX. And whereas it sometimes happens that men separate themselves, without reasonable cause, from their wives, and desert their children, and women also desert their children, leaving them a charge upon the said city, or upon some borough, township or place aforesaid, although such persons may have estates, which should contribute to the maintenance of such wives or children: Be it therefore enacted, That it shall and may be lawful for the overseers of the Poor of the said city, having first obtained a warrant or order, from two magistrates of the said city, or for the overseers of any borough, township or place, where such wife or children shall be so left, or where such wife or children shall be so neglected, having first obtained a warrant or order of any two justices of the peace of the county, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father or mother, as such two magistrates or justices shall order and direct, for providing for such wife, and for maintaining and bringing up such child or children; which warrant or order being confirmed at the next Quarter Sessions for the city or county respectively, it shall and may be lawful for the justices there to make an order for the overseers to dispose of such goods and chattels, by sale or otherwise, or so much of them, for the purposes aforesaid; and if no estate, real or personal, of such husband, father or mother, can be found, wherewith

provision may be made as aforesaid, it shall and may be lawful to and for the said justices, in their court of Quarter Sessions for the city or county respectively, to order the payment of such sums, as they shall think reasonable for the maintenance of any wife or children so neglected, and commit such husband, father or mother, to the common gaol, there to remain, until he or she comply with the said order, give security for the performance thereof, or be otherwise discharged by the said justices; and on complaint made to any magistrate of the city of Philadelphia, or to any justice of the peace in any county, of any wife or children being so neglected, such magistrate or justice shall take security from the husband, father or mother, neglecting as aforesaid, for his or her appearance at the next General Quarter Sessions, there to abide the determination of the said Court, and for want of security, to commit such persons.

XXXI. And be it further enacted, That the several fines, forfeitures and penalties, sum or sums of money, imposed or directed to be paid by this act, and not herein otherwise directed to be recovered, the same, and every of them, shall be levied and recovered by distress and sale of the goods and chattels of the delinquent or offender, by warrant, under the hand and seal of any one Justice of the County, where the delinquent or offender dwells, or is to be found; and after satisfaction made of the respective forfeitures, fines, penalties and sums of money, directed to be levied by such warrant as aforesaid, together with such legal charges as shall become due on the recovery thereof, the overplus, if any, to be returned to the owner or owners of such goods and chattels, his or her executors or administrators.

XXXII. Provided always, That if any person or persons shall find him or themselves aggrieved with any judgment of the justices, given out of their sessions, in pursuance of this act, such person or persons may appeal to the next General Quarter Sessions of the Peace for the county or city, where sentence was given (except in cases of removals, and cases of poor persons becoming chargeable in one place, who are legally settled in another, as is otherwise provided for by this act) whose decision, in all such cases, shall be conclusive.

XXXIII. And be it further enacted, That if any action shall be brought against any overseer or other person, who, in his aid, and by his command, shall do anything concerning his office, he may plead the general issue, and give this act,

and any special matter, in evidence; and if the plaintiff shall fail in his action, discontinue the same, or become non-suit, he shall pay double costs.

XXXIV. And be it further enacted, That an act of the General Assembly of this province, entitled An Act for the relief of the poor; and another act, entitled An Act for supplying some defects in the law for the relief of the poor; and another act, entitled A supplement to the several acts of Assembly of this province for the relief of the poor; and another act, entitled An act for amending the laws relating to the poor; be, and are hereby repealed, annulled and made void.

XXXV. Provided always, and be it further enacted, That nothing in this act contained shall be deemed or construed to extend, to abridge, alter or change the powers and duties of the present respective overseers of the Poor of any city, borough, township or place, within this province; but that they, the said Overseers of the poor, shall continue to hold, exercise, do and perform the respective duties to their offices belonging, until the twenty-fifth day of March next, as fully and amply, to all intents and purposes, as if this act had not been made, anything herein contained to the contrary notwithstanding.

XXXVI. And be it further enacted, That so much of the act of Assembly, passed in the sixth year of his present Majesty's reign, entitled An Act for the better employment, relief and support of the poor, within the city of Philadelphia, the district of Southwark, the township of Moyamensing and Passyunk, and the Northern-Liberties, as relates to the applying the monies which shall be raised in the said city, district and townships, for the maintainance, support and employment of their respective poor, or is otherwise hereby altered or supplied, shall be, and is hereby declared to be, repealed, null and void.

XXXVII. And be it further enacted, That this act shall continue in force for the space of five years, and from thence to the end of the next sitting of Assembly and no longer.

This act, as will be seen from the last section, was limited to five years, but was made perpetual by act of April 6, 1776, and remained so until the act of 1836 was passed.

April 3. 1794, the legislature passed "An act authorizing

the admission of certain persons as witnesses in cases respecting the settlement of paupers."

The preamble of this act says, "Whereas it appears that great inconveniences arise from the non-admission of the testimony, in cases respecting the settlement of paupers, of persons inhabiting either of the townships concerned, inasmuch as it frequently excludes the best possible light and evidence the nature of the case admits;" and was one of the first steps of the legislation towards the change of that unbending rule, preventing parties to testify on account of interest, and of which Mr. Miller, in his excellent little work on the competency of witnesses, says: "No more striking instance of the possible disadvantages of an irrefragable rule, which however reasonable in its origin, becomes absurd when pushed to its purely logical conclusion, could be cited than that which rendered the inhabitants of a district in which he is assessed for taxation incompetent to testify on behalf of the corporation in a suit to recover a penalty."

The sixth section of the act of April 7, 1795, entitled "An act to regulate the mode of assessing and collecting county rates and levies," contains a clause, giving the county commissioners "power, on appeals, to abate or take off the tax upon such freemen, mechanics, or persons of other profession, as they may think unable to discharge the same."

There are many other acts of the legislature, portions of which touch the interests of the poor, but as many have been repealed, either directly, or by implication, some have become obsolete, and others supplied or embodied in the act of 1836, the author has concluded to pass these by for the present, and only speak of them when necessary in commenting on the act of 1836, and will therefore at once pass to the latter.

CHAPTER II.

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The poor laws of the commonwealth of Pennsylvania are now almost entirely embodied in the act of June 13, 1836, and its supplements, which in its nature is a code, or system, founded on past experience, and covers nearly everything relative to the poor and their support, and yet, broad as it is,

and plain and simple as it appears, and at the time of its enactment supposed to cover every requisite, still, like all legislation, it required judicial construction, and could only be administered by the light of precedents, and decisions of analogous cases, which arose under earlier acts both American and English, from which this was largely made up.

We therefore propose (as stated in our preface) to take the act of June 13, 1836, section after section, and under each give the judicial construction placed upon it by our supreme court as well as by some of the lower courts.

Act June 13, 1836, P. L. 541.

An Act relating to the support and employment of the poor.

Overseers to Provide for Poor Persons Having a Settlement in the District. P. & L. Dig. 3580, § 95.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That it shall be the duty of the overseers of every district, from time to time, to provide as is hereinafter directed, for every poor person within the district, having a settlement therein, who shall apply to them for relief.

Overseers.

By reference to the act of 1771, Chapter I, we will see how the overseers of the poor were constituted. By the ninety-fourth section of the act of April 15, 1834, entitled "An Act relating to counties and townships, and county and township officers," the office of overseer was abolished, and their duties and powers transferred to the supervisors: P. L. 554. But by the ninth section of the act of February 28, 1835, P. L. 47, it was again provided that each township elect two overseers of the poor, excepting, however, the counties of Erie, Frank-

lin, Wayne, Venango, Warren, Susquehanna, Bradford, Tioga and Luzerne, to which by act of March 26, 1858, P. L. 172, the county of Lawrence was added.

By the erection of county and township poor houses, and the management of them by a board of directors, constituted corporations, or bodies politic by their charters, the duties of the overseers in those localities were transferred to the said directors, and the boards of overseers ceased to exist, except for the purpose of settling up their affairs. These charters will all be found indexed in the author's "Digest of Corporation Titles." It follows, therefore, that *overseers* and *directors* of the poor are synonymous terms, and the latter is substituted by implication whenever necessary.

District.

The forty-fifth section of this act is explanatory of the word district, and provides that it shall be construed and taken to mean township and borough, and any other territorial division, in and for which officers charged with the relief and support of the poor are directed or authorized by law to be chosen. See also following act and construction placed upon it by the supreme court in *Jenks v. Sheffield*, 135 Pa. 400.

Act June 4, 1879, P. L. 78.

An Act to create poor districts and to authorize purchase of lands and erection of buildings to furnish relief and give employment to the destitute, poor and paupers in this commonwealth.

Each County a Poor District. P. & L. Dig. 3510, § 20.

Section 1. Be it enacted, etc., That for the purpose of furnishing relief to the poor, destitute and paupers, giving them employment and carrying out the provisions of this act, each county of this commonwealth is hereby created a district, to be known as " . . . county poor district."

Purchase of Real Estate. P. & L. Dig. 3510, § 21.

Section 2. That the commissioners of each county are authorized and empowered to select and purchase real estate within said district, erect thereon buildings, provide tools, machinery and stock, as they in their judgment may deem necessary, proper and sufficient to carry out the design and purpose of this act. The conveyance and title for such real estate shall be taken in the name and for the use of the district mentioned in the first section of this act.

Question of Purchase. P. & L. Dig. 3511, § 22.

Section 3. The said county commissioners shall not purchase real estate for the purpose of this act, until recommended so to do by petition and votes, as follows: That is, at any time after the passage of this act, on petition of two-thirds of overseers of poor then in office within such district, the court of quarter sessions of such county shall submit the question of such purchase to the votes of the qualified electors of such district; such election shall be held according to the direction of said court, at either the election of township officers, in February, general election in November, or at a special election ordered by the court for the purpose, and shall be held and conducted by the officers provided by law for holding elections, in the respective voting districts and precincts within such districts, and according to the laws governing municipal and general elections within this commonwealth. At least sixty days' notice of such election shall be given by the sheriff of said county, by publication in two newspapers published within said county.

Qualified Electors Decide. P. & L. Dig. 3511, § 23.

Section 4. The election officers shall at such election receive ballots from qualified electors, written or printed as follows: On the outside "poor house," on the inside either "for poor house" or "against poor house;" at the close of the polls the votes shall be counted, and duplicate certified returns of the result thereof be made and sealed, one copy of which shall be deposited with the commissioners of such county, to be opened by them, and the other with the clerk of quarter sessions of the county; at the first meeting and session of the

court of quarter sessions thereafter, the said returns deposited with the clerk shall be opened and counted, and a record made of the result of said election; if a majority of the votes cast are for a poor house, the county commissioners shall within a reasonable time, at their discretion, proceed to purchase real estate and erect buildings as provided in this act; if a majority of the votes so cast are against a poor house, no land shall be purchased until at an election subsequently held not less than two years thereafter, in the manner as before provided, a majority of the votes cast shall be in favor of a poor house; and the expense of such election shall be borne by the said county.

Authority to Borrow Money. P. & L. Dig. 3511, § 24.

Section 5. At any time after a vote in favor of a poor house the county commissioners are authorized to borrow money and issue bonds therefor, and negotiate the same for the purpose of raising money necessary to carry out the provisions of this act; such bonds shall not be of a denomination less than one hundred dollars, nor bear interest at a higher rate than six per centum; they shall be payable by the said poor district, shall not be sold below par, and shall not be subject to taxation except for state purposes.

Management of Property. P. & L. Dig. 3512, § 25.

Section 6. The county commissioners and their successors in office shall have control, management and direction of the property purchased as aforesaid, and shall provide all things necessary for the maintenance and employment of the poor of their said district, make necessary repairs and improvements of buildings, cultivate the real estate, and use the proceeds of labor of the poor under their charge in their support and maintenance.

Employees. P. & L. Dig. 3513, § 30.

Section 7. The county commissioners shall elect on the first Monday of January of each year the following officers to serve for one year, and fix their compensation, that is one person to serve in each of the following positions, namely: One as

superintendent of poor house and grounds, one as physician and surgeon. They shall also elect and fix compensation of all other necessary employés and assistants, all of whom shall be subject to removal by said commissioners at any time.

Treasurer. P. & L. Dig. 3513, § 31.

Section 8. The treasurer of such county shall be *ex-officio* treasurer of said poor district; he shall receive all moneys belonging to the district, and pay out the same on warrants drawn by the commissioners, who shall fix his compensation for such service. The accounts of the treasurer with the said district shall be audited by the auditors of said county in accordance with the laws relating to the accounts of county treasurer.

Completion of Building. P. & L. Dig. 3512, § 26.

Section 9. As soon as the buildings are completed and the said county commissioners are prepared to accommodate the poor of said district, they shall give notice of the same, by personal notice upon each of the overseers of the poor of each township and borough within said district, and also by publication in at least one newspaper published in said county.

Removal of Poor and Maintenance. P. & L. Dig. 3512, § 27.

Section 10. Immediately after notice that the commissioners are prepared to accommodate the poor of such district, it shall be the duty of the overseers of the poor of the respective townships and boroughs within said district to remove all poor persons entitled to relief to the said poor house, and deliver them to the custody of the director or superintendent, and from and after such time no expense for help, assistance and maintenance of poor persons shall be incurred by such overseers; when by sickness or any other sufficient cause, any poor person cannot be removed to such poor house, the overseers shall represent the case to the nearest justice of the peace, who being satisfied that said person cannot be removed, shall certify the same to the commissioners, with an order directing the commissioners to maintain such poor person until he or she can be removed, and the charge and extra expense of such maintenance shall be paid by the said commissioners.

Duties of Commissioners—Relief. P. & L. Dig. 3513, § 28.

Section 11. The said commissioners shall, from time to time, receive, maintain, provide for and employ all paupers, poor and indigent persons, within their district, entitled to relief and having a settlement therein. The duties heretofore performed by overseers of poor within such districts, shall be done and performed by said commissioners, with the same rights and subject to the same penalties. Orders of relief and removal shall be granted by two justices of the peace or aldermen to and upon said commissioners, in the same manner and subject to the same rules as are now applicable to overseers of poor within said district. Said commissioners may, in exceptional and special cases, grant out-door relief to poor persons if they deem it best, but no person shall be entitled to claim relief who refuses to go to said poor house.

Meeting of Commissioners. P. & L. Dig. 3513, § 32.

Section 12. A majority of such commissioners shall be a quorum for the transaction of business; they shall meet at least once a month at the poor house, visit the apartments, inspect the management of the work upon and about the real estate, see that the poor are properly treated, hear all complaints, and cause all grievances that may happen by neglect to be redressed; they shall keep a record of their proceedings, which shall be evidence of their action in any subsequent judicial proceedings.

Fines for Use of Poor. P. & L. Dig. 3514, § 33.

Section 13. All fines, forfeitures, bequests, gifts, and devises for the use of the poor of said district shall go to and be received by said commissioners, who shall demand and receive the same, and use, invest or expend the same as they in their judgment deem best, for the purpose of providing support and employment for the poor and in paying the debts of said district.

Taxation for Poor Purposes. P. & L. Dig. 3514, § 34.

Section 14. The basis of taxation for poor purposes shall be the last preceding assessment for county rates and levies. The commissioners shall have authority to levy and collect

a tax not exceeding in one year ten (10) mills on the dollar of the assessed valuation, for the purpose of supporting the poor, paying officials and employes and the current expenses of managing the poor farm and work upon it. Taxes shall be levied on or before the third Monday of February in each year, and shall be collected in the same manner as other county taxes.

Building Tax May be Levied. P. & L. Dig. 3514, § 35.

Section 15. For the purpose of paying debt incurred in purchase of real estate and improving it, and to redeem bonds authorized in section five (5) of this act, and also for the purpose of making permanent improvements on real estate, the commissioners may levy a building tax, in addition to the tax for current expenses, and to be collected in the same manner; the building tax shall in no year exceed in amount one-half of the amount levied for current expenses.

Bonds May be Issued. P. & L. Dig, 3514, § 36.

Section 16. The commissioners may renew any of the bonds provided to be issued in section five (5), if they have not money in the treasury to pay them when they become due and do not deem it advisable to levy tax sufficient to pay them in full.

Accounts and Compensation. P. & L. Dig. 3514, § 37.

Section 17. The county commissioners shall keep accurate accounts of all moneys received by them in any way for the purposes of this act as well as all paid out, including such reasonable expenses as they may incur in carrying out the business, and which they shall be allowed credit for. All accounts under this act shall be audited by the county auditors. Said commissioners shall be entitled to charge in their accounts as compensation the same rate per day for time necessarily employed about the business that they are entitled to receive as county commissioners.

Office of Overseer to Cease. P. & L. Dig. 3530, § 93.

Section 18. After delivery of poor to the commissioners as provided for, the overseers of poor in the townships and borough embraced in said district shall cease to act as over-

seers of poor, except so far as may be necessary to levy and collect tax, settle the amounts and pay debts already incurred.

Treasurer to give Bond. P. & L. Dig. 3515, § 38.

Section 19. The commissioners may require bond with security from any officer or employé appointed by them under this act; it shall be their duty to see that the county treasurer gives bond with surety to secure the safe keeping and proper payment of all moneys that come into his hands on account of said district, and shall fix the amount of the treasurer's bond.

Cities not Included in District. P. & L. Dig. 3515, § 39.

Section 20. When any county embraces within its limits an incorporated city, such city and the territory embraced within it shall not be included in such poor district, and such city shall not be in any way affected by this law, but all the other parts of such county shall in such cases compose the poor district of that county.

Local Laws not Repealed. P. & L. Dig. 3515, § 40.

Section 21. This act shall not be construed to repeal any local act or acts under which poor houses or homes for relief of the destitute have been erected or are now managed or controlled, nor repeal any general law under which lands have been purchased or poor houses have been commenced to be built.

Act June 19, 1897, P. L. 175.

An Act to amend Section three of an act, entitled "An act to create poor districts, and to authorize purchase of lands and erection of buildings to furnish relief and give employment to the destitute, poor and paupers in this commonwealth," approved the fourth day of June, A. D. one thousand eight hundred and seventy-nine, relating to the number of overseers of the poor necessary to sign certain petitions.

Section 3, Act June 4, 1879, Amended. P. & L. Dig. Sup. 465, § 6.

Section 1. Be it enacted, etc., That the third section of an act entitled "An act to create poor districts, and to au-

thorize the purchase of lands and erection of buildings to furnish relief and give employment to the destitute poor and paupers in the commonwealth," approved the fourth day of June, A. D. one thousand eight hundred and seventy-nine, which reads as follows:

Section 3 (reciting Section 3, of act of June 14, 1879) be and the same is hereby amended so that the same shall read as follows:

Regulating Purchase of Real Estate.

Section 3. That the said county commissioners shall not purchase real estate for the purpose of this act, until recommended to do so by petition presented to court of quarter sessions by a majority of the overseers of the poor in office in said county at the time of signing said petition, whereupon the said court shall submit the question of said purchase to the votes of the qualified electors of such district; such election shall be held according to the direction of said court, at either the election for township officers in February, the general election in November, or at a special election ordered by said court for the purpose; and shall be held and conducted by the officers provided by law for holding elections in the respective voting districts and precincts within said districts, and according to the laws governing municipal and general elections within the commonwealth; at least sixty days' notice of such election shall be given by the sheriff of the county, by publication in two newspapers published within said county.

Act June 4, 1879, Unconstitutional.

The act of June 4, 1879, was declared unconstitutional by the supreme court, Mr. Justice Clark delivering the following opinion: "The act of June 4, 1879, was intended to establish a general system for the relief and employment of the destitute poor throughout the state, and its general plan or purpose is that each county shall be or become a single poor district; it does not, however, immediately abrogate the office or authority of township overseers of the poor.

"2. These are to continue until the county commissioners of the particular county have provided a plan for the accom-

modation of the poor; whether, however, by reason of thus tending to produce local results, the act is wholly unconstitutional, not decided, though it would seem that the prohibition of local or special legislation does not extend to the affairs of poor districts.

"At all events said act cannot be held constitutional in part, and in part unconstitutional; its provisions were obviously intended to operate as a whole; and moreover, in view of the constitutional limitations upon the creation of municipal indebtedness, it would seem impossible while setting aside Sections 3 and 4 as invalid, to sustain the other sections."¹

Act May 8, 1876, P. L. 149.

To provide for the erection of a poor house, and for the support of the poor in the several counties of the commonwealth.

Whereas, It is the duty of society to make provisions for the comfortable maintenance of those upon whom fortune has frowned, who are found to be destitute and void of the means of support; therefore,

Selection and Conveyance of Real Estate.

Section 1. Be it enacted, etc., That the county commissioners of the several counties of the commonwealth may select such real estate as they may deem necessary for the accommodation of the poor of their respective counties, and shall submit such, with selection, together the terms and conditions upon which such real estate can be purchased in fee simple, to the court of quarter sessions in and for the proper county, and if the same shall be approved by said court, the county commissioners shall take a conveyance therefor in the name and for the use of corporation mentioned in the fourth section of this act; and they shall certify the proceedings therein under their hands and seals to the clerk of the court of quarter sessions of such county, and the same shall be entered at length upon the records of such court.*

¹ Jenks Township Poor District *v.* Sheffield Township Poor District, 135 Pa. 400.

* Amended March 24, 1877, P. L. 40, Section 1: see post, page 39.

Election and Classification of Directors.

Section 2. That at the next general election to be held after the purchase of the real estate as provided for in the first section of this act, the qualified electors of such county shall elect three reputable citizens of said county to be directors of the "Home for the Destitute" of said county; said election shall be conducted under the general election laws of the commonwealth in every respect, and the said directors shall meet at the court house in the respective counties on the first day of December following their election, and divide themselves, by lot, into three classes, the place of the first to be vacated at the expiration of the first year, of the second at the expiration of the second year, that of the third at the expiration of the third year, so that those who shall be chosen after the first election and in the mode above described may serve for three years, and one-third years shall be chosen annually thereafter.*

Qualification of Directors.

Section 3. That every director elected in the manner aforesaid, or appointed as directed by the twelfth section of this act shall, within ten days after he is notified of his said election or appointment, and before he enters upon the duties of the said office, take an oath or affirmation as prescribed by Article VII, Section 1 of the constitution; and in case of neglect or refusal to take the said oath or affirmation he shall forfeit and pay the sum of ten dollars for the use of the poor of said county, which shall be recovered by said directors for the time being as similar debts are by law recoverable; and the directors qualified as aforesaid, are hereby authorized to administer oaths or affirmations where it shall be necessary in relation to the duties of said office.*

To be a Corporation. P. & L. Dig. 3523, § 71.

Section 4. That the said directors shall forever hereafter, in name and in fact, be a body politic and corporation in law to all intents and purposes whatsoever relative to the poor of said county, and shall have perpetual succession, and may sue and be sued, plead and be impleaded by the name, style and title of "The Directors of a Home for the Destitute of the county of . . .," and by that name shall and may

* Repealed May 18, 1878, P. L. 63.

receive, take and hold any lands, tenements and hereditaments not exceeding the yearly value of eight thousand dollars, and any goods and chattels of the gift, alienation or bequest of any person or persons whatsoever for the benefit of the poor aforesaid; to take and hold any lands and tenements within their county, in fee simple or otherwise, under the supervision of the court aforesaid, and dispose of the same as deemed conducive to the comfort of the inmates; to provide all things necessary for the lodging, maintenance and employment of said persons; and the said directors shall have power to employ and at pleasure remove a steward or stewards, a matron or matrons, physician or physicians, surgeon or surgeons, and all other attendants that may be necessary for the said destitute persons respectively, and to bind out apprentices so that such apprenticeship may expire, if males, at or before the age of twenty-one; if females, at or before the age of eighteen years: Provided, That no child be bound out for a longer time than until he arrives at the age of eighteen years, unless he be bound out to a trade other than a farmer: Provided also, that no child shall be apprenticed without the limits of the state; and the said directors are hereby empowered to use one common seal in all business relating to said corporation, and the same at pleasure to alter and renew.

Yearly Estimates for Maintenance. . P. & L. Dig. 3524, § 72.

Section 5. That the said directors, as soon as may be, after their election and organization as aforesaid, and annually thereafter, shall make an estimate of the yearly cost of maintaining said establishment and furnish said estimate to the county commissioners, who shall add the same to their yearly estimate preparatory to levying their tax for the coming year, and they shall, from time to time, make such suggestions to the county commissioners, as they may deem necessary, as to keep the improvements or alterations that may be required to pace with the necessities of the occasion, and the commissioners aforesaid shall make such changes and improvements as they may deem necessary; and for the purposes of this act the commissioners aforesaid are hereby authorized to procure a loan, for which they may pay interest not exceeding six per centum, if they deem it best to do so, said loan not to exceed three-fourths of the amount necessary for the purchase of said property and the erection of the

necessary buildings; said loan to be gradually reduced and to be entirely cancelled within five years.

Duties of County Treasurer—Visitors.

Section 6. That the amount necessary to defray the annual expense of the "Home for the Destitute" shall be paid over to the county treasurer, and by him paid out on warrants drawn on him by the county commissioners, upon orders presented to him signed by the president of the board of directors, and countersigned by the secretary, and to which the seal of the corporation shall be attached; and it shall be the duty of the county commissioners to keep the accounts of the "Home for the Destitute" in a set of books to be provided for that purpose, and said books shall be audited by the county auditors at the same time the other accounts of the county are audited by them, and to publish annually a detailed statement of the receipts and expenditures of said "Home for the Destitute" at the same time and in the same manner the annual county statement is published; and the judges of the several courts of the said county, and the ministers of the gospel of the different denominations shall, *ex-officio*, be visitors of said institution, and shall have the privilege at all reasonable times to visit and examine the condition of the same, including the books of said institution, in which shall be kept an account of all expenses of the same as also all the receipts of the same, as well as those derived from the county treasury as the productions of the farm and the industry of its inmates, as also whatever gifts or bequests they may have received from whatever source the same may have been derived.*

Removal of Poor to Buildings. P. & L. Dig. 3517, § 46.

Section 7. That as soon as the said buildings shall have been erected or purchased, and all necessary accommodations provided therein, notice shall be given to the overseers of the poor in the various districts of said county, requiring them forthwith to bring the poor of their respective districts to said "Home for the Destitute," which order the overseers are required to comply with or otherwise forfeit the cost of all future maintenance, except where by sickness or any other

* Repealed May 18, 1878, P. L. 63.

sufficient cause, the poor person cannot be removed, in which case the overseers shall represent the same to the nearest justice of the peace, who being satisfied of the truth thereof, shall certify the same to the said directors, and at the same time issue an order under his hand and seal to the said overseers directing them to maintain such poor person until he or she may be in a situation to be removed, and then to remove the said person and deliver him or her to the steward or keeper of said home, together with the said order, and the charge and expense shall be paid by the said directors.

Reception and Employment of Poor. P. & L. Dig. 3524, § 73.

Section 8. That the said directors shall, from time to time, receive, provide for and employ, according to the true intent and meaning of this act, all such indigent persons as shall be entitled to relief or shall have gained a legal settlement in the said county, and shall be sent there by an order or warrant for that purpose under the hands and seals of two justices of the peace of said county, directed to any constable of the same county or to the overseers of the proper district in any other county of this commonwealth; and the said directors are hereby authorized when they shall deem it proper and convenient to do so, to administer relief to any person in need of assistance or to permit any person or persons to be maintained elsewhere: Provided, That their expense in any case does not exceed that for which they could be maintained in the said home.

Power to Make Rules. P. & L. Dig. 3524, § 74.

Section 9. That the said directors or a majority of them shall be a quorum for the transaction of business, and shall have full power to make and ordain such ordinances, rules and regulations as they shall think proper, convenient and necessary for the government, control and support of the said home and of the revenues thereunto belonging and of all such persons as shall come under their cognizance: Provided, That the same be not repugnant to this, or any other laws of this state or of the United States: And provided further, That the same shall not have any force or effect until they shall have been submitted to the court of quarter sessions for the time being of said county and shall have received the approval of the same.

Directors to Meet Monthly.

Section 10. That a quorum of said directors shall, and they are hereby enjoined and required to meet at the said home at least once in every month and visit the apartments and see that the inmates are comfortably supported, and hear all complaints, and redress, or cause to be redressed, all grievances that may happen by the neglect or misconduct of any person or persons in their employment or otherwise.*

Salaries.

Section 11. The annual salary of the said directors shall be one hundred dollars each.*

Vacancies, How Filled. P. & L. Dig. 3525, § 75.

Section 12. That in case any vacancy by death, resignation or otherwise of any of the said directors, the court of quarter sessions of the respective county shall fill such vacancy until the next general election.†

Settlement of Existing Claims—Surplus. P. & L. Dig. 3517, § 47.

Section 13. That all claims and demands existing at the time of this act being carried into effect shall have full force and effect as fully as if this act had not been passed, and when the same may have been fully adjusted and settled, all moneys remaining in the hands of the overseers, as well as the uncollected taxes levied for the support of the poor in the several districts of said county, shall be paid over to the supervisors of the highways of said county, to be by them added to the road fund and applied as road tax is by law applied in said county.

Office of Overseer Abolished. P. & L. Dig. 3530, § 92.

Section 14. That as soon as the poor of said county shall have been removed to the home of said county and the outstanding taxes collected and paid over the office of overseers of the poor thereafter shall be abolished.

* Repealed May 18, 1878, P. L. 63.

† Amended March 24, 1877, P. L. 40, Section 6.

To Recover Moneys Due Institution. P. & L. Dig. 3525, § 77.

Section 15. That all fines, forfeitures or bequests for the use of the poor shall be payable to the county treasury for the use of said home, and the directors are hereby authorized to demand and receive the same in the name of said corporation may bring suit for the recovery of all money belonging to said institution, to plead and to be impleaded in all matters of law and equity and to prosecute all such suits to final judgment, and the money so recovered shall be paid into the county treasury and shall be applied in liquidation of the debts of the institution and the support of its inmates.

Act Not to Apply to Certain Counties and Districts.

Section 16. That the provisions of this act shall not apply to any county or district that has already within it a county or district poor house or poor houses under any special law, nor to any county or district unless the same shall be accepted by a majority of the voters of such county or district at an election for that purpose to be ordered by the court of quarter sessions of the proper county: Provided, That the directors of the poor may erect and maintain two houses for the destitute in any county containing a population of over (50,000) fifty thousand inhabitants and (600) six hundred square miles.*

Four or More Townships May Unite. P. & L. Dig. 3520, § 59.

Section 17. That whenever the county commissioners of any county see proper from any cause whatever not to comply with the requirements of this act, any four or more townships of any county through a commissioner appointed by the poor overseers of each township can proceed to procure real estate as provided by the first section of this act: Provided, That in all cases it shall be necessary for the majority of the commission to concur in all acts before the court shall take cognizance of the same: And provided further, That district poor houses shall be governed by all the provisions of this act the same as county poor houses, except as far as relates to the appointment of commissioners by the poor overseers forming the aforesaid district.

* Amended March 24, 1877, P. L. 40, Section 6.

Section 18. All acts or parts of acts inconsistent with this are hereby repealed.

Act March 24, 1877, P. L. 40.

A supplement to an act, entitled "An Act to provide for the erection of a poor house and for the support of the poor, in the several counties of this commonwealth," approved May eighth, one thousand eight hundred and seventy-six.

Section 1. Be it enacted, etc., That the first section of said act, which is as follows: "That the county commissioners of the several counties of this commonwealth may select such real estate as they may deem necessary for the accommodation of the poor of their respective counties, and shall submit such selection, together with the terms and conditions upon which such real estate can be purchased in fee simple to the court of quarter sessions in and for the proper county, and if the same shall be approved by the said court the county commissioners shall take a conveyance therefor in the name and for the use of corporation mentioned in the fourth section of this act; and they shall certify the proceeding therein, under their hands and seals, to the clerk of the court of quarter sessions of such county, and the same shall be entered at length upon the records of such court," shall be amended so as to read as follows:

Selection of Real Estate. P. & L. Dig. 3515, § 41.

Section 1. That the county commissioners of the several counties of this commonwealth may select such real estate as they may deem necessary for the accommodation of the poor of their respective counties, and shall submit such selection, together with the terms and conditions upon which such real estate can be purchased in fee simple, to the court of quarter sessions in and for the proper county, and if the same shall be approved by the said court the county commissioners shall take a conveyance therefor in the name and for the use of the corporation mentioned in the fourth section of said act; and they shall certify the proceedings therein, under their hands and seals, to the clerk of the court of quarter sessions of such county, and the same shall be entered at length upon the records of such court: Provided. That

before the purchase of any such real estate shall be approved by said court the same shall be submitted to and approved by two successive grand juries of the proper county, or the said court may submit the question of the erection of a poor house to a vote of the qualified voters of the county, and if a majority of the votes cast is in favor of a county poor house, then in either case the court shall approve of the purchase of the real estate selected as aforesaid by the county commissioners.

Voters Decide by Election. P. & L. Dig. 3516, § 42.

Section 2. That the election provided for in the first and sixth sections of this act shall be held by the proper election officers in the several townships, wards and boroughs of the several counties of this commonwealth, at the place for holding the general election, at such times as may be fixed by the court of quarter sessions of the proper county.

Tickets and Returns. P. & L. Dig. 3516, § 43.

Section 3. That it shall be the duty of the judges and inspectors of the elections to receive tickets, either written or printed, from the legal voters of each election district, labelled on the outside "poor house" and on the inside "for poor house" or "against poor house," and deposit said tickets in the proper ballot box as required by law in case of general elections; and the tickets so received shall be counted, and a certified return of the same made and sent or delivered to the clerk of the court of quarter sessions of the proper county as now provided by law for making returns for township and borough elections; and it shall be the duty of the clerk of such court to aggregate the votes, in one column, cast "for poor house," and in another column the votes cast "against poor house," which aggregate, together with the returns of such election, shall be laid before the judges of the court of the proper county at the next regular term thereof succeeding such election; and it shall be the duty of the judges to examine said returns and the aggregate of the votes cast for and against poor house, and publicly declare the result, which result shall be certified by said judges and filed with the records of said court.

Regulating Election. P. & L. Dig. 3516, § 44.

Section 4. That in receiving and counting, and in making returns of the votes cast, the inspectors and judges and clerks of said election shall be governed by the laws of this commonwealth regulating general elections; and all the penalties of said election laws are hereby extended to and applied to the voters, inspectors, judges and clerks voting at and in attendance upon its elections, held under the provisions of this act and the act to which this is a supplement.

Expenses of Election. P. & L. Dig. 3516, § 45.

Section 5. That the expenses of such election shall be paid by the treasurer of the proper county: Provided, No new election shall be ordered for three years after holding the last election.

Not to Apply to Certain Counties. P. & L. Dig. 3525, § 78.

Section 6. That the sixteenth section of said act of which this is a supplement, which reads as follows: "That the provisions of this act shall not apply to any county or district that has already within it a county or district poor house or houses under any special law, nor to any county or district unless the same shall be accepted by a majority of the voters of such county or district at an election for that purpose to be ordered by the court of quarter sessions of the proper county: Provided, That the directors of the poor may erect and maintain two houses for the destitute in any county containing a population of over fifty thousand inhabitants and six hundred square miles," shall be amended so as to read as follows:

That the provisions of this act shall not apply to any county or district that has already within it a county or district poor house or houses under any special law, unless the same shall be accepted by a majority of the voters of such county or district at an election for that purpose, which may be ordered by the court of quarter sessions of the proper county upon the petition of fifty tax payers: Provided, That the directors of the poor may erect and maintain two houses for the destitute in any county containing a population of over sixty thousand inhabitants and six hundred square miles.

Act April 28, 1887, P. L. 75.

To authorize the courts of common pleas to decree the sale of real estate held for poor purposes, in the several counties, boroughs, townships and poor districts in this commonwealth, and the reinvestment of the proceeds thereof.

Sale of Real Estate. P. & L. Dig. 3559, § 163.

Section 1. Be it enacted, etc., That the courts of common pleas of the several counties of this commonwealth shall have jurisdiction and are hereby authorized to decree a public or private sale of any poor house property, or real estate held for the relief and employment of the poor, in any county, city, borough, township or poor district, at such times and in such parts or parcels and upon such terms as, in the opinion of any such court, may be considered most advantageous to such district.

When Sale may be Decreed. P. & L. Dig. 3559, § 164.

Section 2. Such sale may be decreed upon the petition of the overseers, or the poor directors, or managers for the relief and employment of the poor, of any county, city, borough, township, or poor district, setting forth that such sale would be to the advantage of such district, and all facts needful for the information of the court, under oath or affirmation, and shall only take place, after a full and careful investigation by the court, aided, when deemed necessary, by the report of a competent person to be appointed by the court; and if upon such investigation the court shall deem it to the advantage of such district that the property so held or any part thereof should be sold, such court is hereby authorized to decree a sale thereof, and to direct the investment of the proceeds of such sale or sales in the purchase, or the use of such district, of such other real estate as may be necessary for poor purposes, and in the erection of suitable buildings thereon for the comfortable maintenance, employment and support, of the poor of such district, and such other investments thereof as may be deemed most advantageous to the district.

Section 3. That all laws inconsistent with the provisions of this act be and the same are hereby repealed.

Act June 25, 1895, P. L. 299.

Authorizing and empowering the directors of the poor in counties having farm lands in connection with county almshouse, to lease the land for oil and gas purposes.

May Lease Lands. P. & L. Dig. Sup. 465, § 5.

Section 1. Be it enacted, etc., That the directors of the poor in the several counties of this commonwealth having farm lands in connection with almshouses, be and the same are hereby authorized and empowered to lease said lands for the purpose of producing oil and gas, on such terms as may be advantageous to such county or body corporate owning or controlling the same.

To Provide for.

"The spirit of the poor laws is to cast upon the public the duty of providing for the relief of all helpless poor. This duty is to be performed through the agency of officers selected for the purpose, who are to procure for the proper subjects for relief, sustenance, clothing, medical attendance if necessary, and burial, at the expense of the public. But the legislature while imposing this obligation upon the different districts in the commonwealth, have also taken care that the community shall not be defrauded by their official agents, in the extension of relief to those who are not proper objects for public bounty. They therefore enacted, in the ninth section of the act of 1771, and repeated the enactment in the act of 1836, Section 6, that no person shall be entered on the poor book of any district, or receive relief from any overseers, before such person, or some one in his behalf, shall have procured an order from two magistrates of the county for the same; and in case any overseer shall enter in the proper book, or relieve such poor persons without an order, he shall forfeit a sum equal to the amount of relief given, 'unless such entry or relief shall be approved by two magistrates as aforesaid.

"That is, if his act is approved by the same authority which could have given an order. This was a wise and humane provision for cases of sudden emergency. And funeral expenses are put on the same footing as relief to the living, the subsequent approval will have the same effect as to them as to relief given." ²

Act June 6, 1893, P. L. 328.

An Act providing for the relief of needy, sick, injured, and in case of death, burial of indigent persons whose legal place of settlement is unknown.

Relief where Settlement is Unknown. P. & L. Dig. 3533, § 104.

Section 1. Be it enacted, etc., That in each and every county of this commonwealth in which a poor or almshouse for the support, care and shelter of the needy and indigent is not maintained by and at county expense, it shall be the duty of the poor directors or overseers of the poor of the several poor districts in such counties to provide all needy, sick and injured person or persons in their said several districts with necessary support, shelter, medicine, medical attendance, nursing, and in case of death, burial, whether the said needy, sick and injured indigent person or persons have a legal settlement in the poor district in which they thus require and receive assistance or not; but all expenses thus incurred for the relief, support, nursing, care or burial of such indigent person or persons whose legal settlement is unknown shall be borne by the county in which the poor district furnishing such relief is located.

And in the event of any such poor district having assumed or paid the expenses thus incurred for the relief or burial of any indigent person or persons whose legal settlement is unknown, the county in which such poor district is located shall be liable to such poor district in an action of assumpsit in a civil court for the amount thus expended or incurred, and the want of an order of relief or approval order shall not be a bar to recovery.

² Directors v. Worthington, 38 Pa. 160.

Section 2. All acts or parts of acts inconsistent herewith be and the same are hereby repealed.

Act June 6, 1893, Constitutionality of.

In *Conyngham Twp. Poor District v. County of Luzerne*, Craig, J., specially presiding, says: "The decision of this case³ involves the constitutionality of the act of June 6, 1893, P. L. 328, entitled 'An act providing for the relief of needy, sick, injured and, in case of death, burial of indigent persons whose legal place of settlement is unknown.' It is contended that this act offends Section 3, of Art. III, of the constitution, in this, that there is nothing in its title to give notice to the taxpayers of the counties of the legislative purpose to impose any burdens upon them. An examination of the act shows that it is intended to relieve the several poor districts of certain defined counties from the expenses of providing all needy, sick and injured indigent persons whose legal settlement is unknown, with necessary support, shelter, medicine, medical attendance, nursing and, in case of death, burial, and to shift those burdens upon such counties. Before this act, the duties therein named belonged to the respective poor directors and overseers of the poor of the several districts both as to indigent persons having a legal settlement, and those whose legal settlement was unknown. But the law makes a change solely in respect to indigent persons whose legal settlement is unknown, and places the expenses of necessary support, shelter, medicine, medical attendance, nursing and, in case of death, burial, on the counties described. The effect of this is to shift the whole and continuous expenses of indigent persons whose legal settlement is unknown from the poor districts liable to their support and maintenance to the county in which the poor districts are located. And the further effect results, that the poor fund of the respective poor districts is relieved

³ *Conyngham Twp. Poor Dist. v. County of Luzerne*, 17 Pa. C. C. R. 83.

from a proper burden, and it is put upon the county to be paid out of the county fund. It seems clear that the title does not embrace all the subject-matter of the proposed legislation, nor does it express the same so clearly and fully as to give notice of the legislative purpose to members of the legislature and to others specially interested therein. Certainly there is nothing in the title to give notice that all 'expenses incurred for the relief, support, nursing, care and burial of such indigent person, whose legal settlement is unknown, shall be borne by the county in which the poor district furnishing such relief is located.' Besides, it will be observed that under this act the commissioners of the respective counties are not entitled to participation in the adjustment and determination of any of the expenses incurred by the poor district; nor have they any power of correction of the bills which might be subject to criticism, or which might be regarded as excessive or unreasonable. But they are made liable to suit for the amount expended or incurred by the poor district, and the want of an order of relief, or approval order, shall not be a bar to recovery. In other words, the county commissioners have no control over the poor districts in this regard, nor, it would seem, have they any right to a hearing in the courts as to any bills which they might deem objectionable. Even the question of unknown settlement (always an important and sometimes difficult one) seems to be left with the poor district and not with the county. This objectionable feature is especially criticised by Mr. Justice Green in *Quinn v. Cumberland County*, 162 Pa. 59. We recognize the rule that the title of a bill need not be a complete index of its contents; that if the title fairly gives notice of the subject of the act, so as reasonably to lead to an inquiry into the body of the bill, it is all that is necessary; but we are impressed with the conviction that the title of this bill conveys to the mind that one subject is the purpose, while another and a different one is its real subject; and, therefore, it tends to mislead, and the subject is not

clearly expressed. Hence we are compelled to declare this act unconstitutional. This ruling we think is fully sustained by the decided cases: *Gackinbach v. Lehigh County*, 166 Pa. 448; *Pierie v. Philadelphia*, 139 Pa. 573; *Com. v. Severn*, 164 Pa. 462; *Com. v. Samuels*, 163 Pa. 283; *Quinn v. Cumberland County*, *supra*, 55; *La Plume Boro. v. Gardner*, 148 Pa. 192; *Road in Phoenixville*, 109 Pa. 44; *Beckert v. City of Allegheny*, 85 Pa. 191; *Dorsey's Appeal*, 72 Pa. 192.

"We are further asked to say that the act under consideration is unconstitutional, because it is a local or special law, and therefore falls within the inhibition of the seventh section of Art. III, of the constitution. Is the act local or special? It provides 'that in each and every county of this commonwealth in which a poor or almshouse for the support, care and shelter of the needy and indigent is not maintained by and at county expense, it shall be the duty of the poor directors, or overseers of the poor, of the several poor districts in such counties to provide,' etc. It is operative, therefore, only in such counties where the indigent poor are not cared for 'by and at county expense.' Where they are cared for 'by and at county expense' the act is imperative. It is a fact, of which we are bound to take judicial notice, that there is a large number of counties in this commonwealth in which poor or almshouses are maintained 'by and at county expense.' Hence the act must produce local or special results. This is manifest from its face. Such results the constitution will not allow: *City of Scranton v. Silkman*, 113 Pa. 191; *Davis v. Clark*, 106 Pa. 377; *Morrison v. Bachert*, 112 Pa. 322; *M'Carthy v. Com.*, 110 Pa. 243; *Com. v. Patton*, 88 Pa. 258. In our judgment this act is local or special legislation under the attempted disguise of a general law. Of all forms of special legislation this is the most vicious: *Scowden's Ap.*, 96 Pa. 425; *Morrison v. Bachert*, 112 Pa. 330. Moreover, it is said that a statute which relates to particular persons or things of a class is special, and comes within the constitutional pro-

hibition: *Wheeler v. Phila.*, 77 Pa. 348; *Lehigh Valley Coal Co.'s Ap.*, 164 Pa. 50. We are of opinion that this statute relates to particular things of a class, and is therefore special.

"From these views it results that we hold the act under consideration unconstitutional on both the grounds urged."

Act June 6, 1893, Unconstitutionality of.

In a case-stated, a needy, indigent person, having no legal place of settlement in this state, and whose place of legal settlement is unknown, became a charge on Decatur township in 1893, and said township expended various sums of money and later presented a bill to the county commissioners for payment, but they resisted payment on the ground that the act of June 6, 1893, P. L. 328, on which the claim was presented, is unconstitutional

Gordon, P. J., 1895: "The defence is that the act of June 6, 1893, is unconstitutional and void upon two grounds. First. Because the subject of the act is not clearly expressed in the title, and is therefore in violation of Section 3, Art. III of the constitution, which reads, 'No bill except general appropriation bills shall be passed containing more than one subject, which shall be clearly expressed in its title.' (Re-cites act.)

"The purpose of the constitutional requirement is to furnish notice to members of the legislatures and all persons interested of the subject and scope of pending legislation, and so as to enable them to decide whether interested or not by an examination of the title alone. It need not furnish an index to the bill, but must give its subject, and express the same so clearly and fully as to give notice of its purpose. It must either give such notice of the contents or scope of the bill as will apprise persons interested of its purpose, or be such as to put a reasonably prudent person upon inquiry therefor and so as to enable him to judge of

whether interested or not. And while the purpose is to give notice thus to all persons interested, its primary and principal object is to notify those whose burdens may be increased or material interest affected, so as to enable them to be heard in enactment of the law, rather than to furnish notice to objects of the law's bounty. Viewed in this light how stands the act in question—the counties of the state to which it is limited, to wit: Those in which a poor or almshouse is not maintained at county expense, were not liable for the relief and support of the poor—such liability was confined to poor districts. The bill makes radical changes in the law. The question involved in the case is, Does the title give notice thereof? The subject of the bill as set out in the title is, 'The relief of needy, sick, injured, and in case of death, burial of indigent persons whose legal settlement is unknown.' The only purpose disclosed is relief, and the only notice given is to the person who is to receive it, who are the objects of the bill's bounty, and it is limited to those 'whose legal settlement is unknown.' But the bill has a much broader scope. First. It extends to all needy indigent persons regardless of their place of legal settlement. Second. It makes poor districts liable for all such relief. Third. It provides that relief furnished by poor districts to those 'whose legal settlement is unknown' shall be borne by the county in which the poor district furnishing such relief is located, and in the event of such poor districts 'having assumed or paid the expenses incurred in such relief the county shall be liable to it in an action of assumpsit,' and that 'the want of an order of relief or approval order shall not be a bar to recovery.'

"It will thus be seen the bill makes radical changes in the law. The sources of revenue by taxation for poor and county purposes are different. The same kind of property are not taxable for each. This bill removes certain burdens from poor districts and places them upon the county, thereby affecting the liability of the taxpayer and of his property to taxation. The county is made liable to the poor district for

relief furnished, without any order of relief, even though it may not have paid the same if only it assumed to pay it.

"The bill does not require any notice to the county that relief is being or will be furnished, and that it will be called upon to pay the same. It is given no voice or say in the furnishing of relief, or in determining whether the indigent person is a proper subject of bounty, and the kind and amount of assistance he should have.

"The title is silent as to how or by whom the relief shall be furnished. It furnished no notice to county officials of any change in the law affecting counties. It gives them no information which should put them upon inquiry as to the contents of the bill, and yet it materially affects their rights and increases their liabilities. The remarks of Mr. Justice Green, in delivering opinion of supreme court in the recent case of *Quinn v. Cumberland County*, 162 Pa. 59, which was a case very much like the present one, when a bill affected the rights of a county and the title furnished no notice thereof, are very pertinent. He says: 'While it is probably competent for the legislature to enact such laws, it is their duty, and their constitutional obligation, to give notice in the title of such enactments, of their intention to impose such liability upon the municipal organization which is to be affected, and if this duty is neglected, such legislation is contrary to the requirements of the constitution, and therefore void.' The rule of construction adopted by the supreme court in the case *In re Road in Phoenixville*, 109 Pa. 44, and subsequently indorsed in many other cases is that, 'while it may be difficult to formulate a rule by which to determine the effect to which the title of a bill must specialize its object, it may be safely assumed that the title must not only embrace the subject of the proposed legislation, but also express the same so clearly and fully as to give notice of the legislative purpose to those who may be specially interested therein; unless it does this it is useless.' *Sewickley Boro. v. Sholes*, 118 Pa. 165; *Ridge Ave. R. R. Co. v. Phila.*, 124 Pa. 219; *Phila. v. Ry. Co.*, 142

Pa. 484; *Quinn v. Cumberland Co.*, 162 Pa. 55; see also *Com. v. Green*, 58 Pa. 233; *Dorsey's Ap.*, 72 Pa. 192; *Union Pass. R. R. Co.'s Ap.*, 81 Pa. 91; *Beckert v. City of Allegheny*, 85 Pa. 191.

"The other ground upon which it is claimed the act of assembly is void is that it is in conflict with Article III, Section 7. Par. 2, of the constitution, which reads, 'The general assembly shall not pass any local or special law regulating the affairs of counties, cities, townships, wards, borough or school district,' in that it does not apply to the whole state but is limited in its operation to those counties 'in which a poor or almshouse for the support, care and shelter of the needy and indigent is not maintained by and at county expense.' That it is local legislation and therefore unconstitutional. In view of the conclusion arrived at with respect to the first objection to the act considered, that it is unconstitutional because of defective title, it is not necessary that we pass upon the second point raised, and we refrain from doing so." ⁴

Emergency Cases.

"In an action by Wilmer Worthington against the Poor Directors of Chester County. One Humphrey Broomhall, on October 27, 1856, received a severe injury upon the Pennsylvania Railroad, near Oakland station, in Chester county. His arm was broken, and he was otherwise seriously injured, so as to require prompt medical attendance. Several physicians were immediately called, among whom was the plaintiff. Upon consultation it was concluded that he could not be moved to the county poor house with any hope of preserving his life, but that possibly he might be removed by railroad to West Chester, his place of residence. Accordingly he was put upon a bed, placed in a car, and carried to

⁴ *Poor District of Decatur Township v. Clearfield County*, 16 Pa. C. C. R. 554.

that place and left in his brother's house on October 29, 1856. On October 30, 1856, his arm was amputated and wounds dressed by the plaintiff, who continued to attend him until February 9, 1857, when he was removed to his father's house in Delaware county, a distance of about eight miles, by putting him in a bed, in a light wagon, and walking the horses carefully all the way. Up to this period he was unfit to be moved to the poor house. He recovered, and some time prior to April, 1859, he returned to West Chester. He was poor at the time of the accident, and during his illness, and was a proper subject for relief, under the poor laws of Pennsylvania. On April 18, 1859, the plaintiff procured an order of maintenance and relief from Henry Fleming, a justice of the peace of said county, declaring said Broomhall a pauper. The plaintiff's bill, as physician, amounted to \$120. The distance from Oakland to the Chester county poor house is from eight to ten miles. The distance from West Chester to the poor house is about six miles. One of the directors of the poor in 1856 and 1857 lived about two miles from West Chester. His residence was well known to the plaintiff, and he was in the habit of receiving his letters and papers at the post-office in West Chester. He, or some of his family, visited the post-office three or four times every week. Upon these facts the court entered judgment for the plaintiff, whereupon the defendants sued out a writ of error."

Referring to the sixth section of the act of 1836, the learned judge of the supreme court said: "This provision is not to be understood to diminish the general obligation to provide for the poor. Its purpose was to protect the community against misappropriation of their funds. The exception which it contains from the prohibition against furnishing relief to any except those who have obtained orders from magistrates, shows that the legislature did not design that the right to relief, and the obligation to furnish would in all cases depend upon the previous 'issue of an order.' The legal duty to extend relief, from which the law raises a promise,

does not spring out of the order, but out of the necessity of the pauper. Doubtless the law contemplates that in ordinary cases an order must be obtained before there is any title to relief, as evidence of such title. But it has repeatedly been ruled, both under the act of 1771 and that of 1836, that a previous order is not indispensable. In cases of emergency, relief may be extended without an order, and must be so extended, and if necessary relief furnished by others than the overseers or directors, they are under obligation to pay, provided an order of approval be obtained afterwards: *Overseers v. Bunn*, 12 S. & R. 292; *South Huntingdon v. East Huntingdon*, 7 Watts, 527; *Directors v. Wallace*, 8 W. & S. 94; *Directors v. Murray*, 32 Pa. 178."

No Time Limited Within Which to Obtain Order of Approval.

"The defendants admitted that this was a case of emergency, but they contend that they are not liable for the relief furnished, because the subsequent order was not obtained until more than two years after the emergency arose. Unquestionably it is proper in such cases that the order should be obtained without unnecessary delay, but we are not prepared to say that if it be not the liability of the public ceases. The legislature have fixed no time within which an order of subsequent approval must be obtained to entitle an overseer to a credit in his accounts; and it is not for us to prescribe limits to the delay. The community is protected by our holding that there is no liability to furnish relief without an order, except in cases of emergency, and that whether there was an emergency or not is to be determined by the magistrates (or magistrate in Chester county), when application is afterwards made to them for an order. If the magistrate errs, the act of assembly provides a remedy by giving an appeal from his decision to the court of quarter sessions of the proper county." ⁵

⁵ *Directors v. Worthington*, 38 Pa. 160.

The Liability May be Enforced as a Contract.

The liability is indicated to be one that can be enforced as a contract, express or implied.⁶ And it was also held that where any person falls sick suddenly, and dies, and an order of relief is afterwards obtained, but without notice to the district ultimately liable, the district affording the relief can enforce reimbursement from the former.⁷ An action on implied assumpsit was sustained for maintenance afforded for a period of nearly two months previous to the order of removal or notice.⁸

The overseers of a township are bound to maintain every poor person within their district, not having a settlement therein, who shall apply to them for relief, until he can be removed to the place of his last settlement, and if in an attempt to remove him to the place of his last settlement, they leave him on the way in a township not legally chargeable with him he may be returned to them by an order of removal.⁹

These, and many other analagous cases that might be cited, are all predicated upon the doctrine of implied assumpsit arising from a legal obligation or duty.¹⁰

From the foregoing we could argue that, inasmuch as the supreme court hold, that all such cases are predicated upon the doctrine of implied assumpsit, arising from a legal obligation; and the legislature having fixed no time within which an order of subsequent approval must be obtained to entitle a party to recover, that it is governed by the statute of limitations, like all other implied contracts.

And yet it has been held that under the circumstances of the case, three years and a half was an unreasonable time.

In an action of assumpsit. Plea, non-assumpsit. The main facts appear in the opinion of the court.

⁶ *South Huntingdon v. East Huntingdon*, 7 W. 527.

⁷ *Ib.* * *Directors v. Worthington*, 38 Pa. 160.

⁸ *Kelly Township v. Union Township*, 5 W. & S. 535.

⁹ *Directors v. Murray*, 32 Pa. 178.

The defendants offered in evidence the rules and regulations of the Chester county almshouse, pertaining to outdoor relief, approved by the court of common pleas, February 20, 1876, one of which provided as follows:

"To entitle any person to pay for medical attendance or other relief furnished to paupers in case of emergency, the claimant must notify one of the directors, or their steward, of the case, in writing, within three weeks after the first attendance or relief has been rendered to the pauper, and also of the earliest occasion the pauper can safely be removed to the almshouse: Provided, This rule shall not apply when the pecuniary circumstances of the individual relieved are not known to the physician or other person furnishing such relief. And when the circumstances of the individual relieved shall become known to the physician or other person after the attendance or other services have commenced, notice as aforesaid shall be given within three weeks after obtaining such knowledge."

It was objected by plaintiff that the defendants had no power conferred upon them by law to make the rule, and that therefore it was not binding upon him.

The court below charged the jury, *inter alia*, as follows:

"In view of the evidence that has been given in this case, I instruct you that if the plaintiff intended to charge the county with the expense of his medical attendance upon John Mullin he should have informed himself, within a reasonable time after the accident, as to whether he was a person entitled to relief, and to have so notified the directors of the poor, if he found such to be the case; but not having given this notice until July or August, 1881, a period of three and a half years after the patient's recovery, it was an unreasonable length of time, and that being the fact, he did not comply with the rule requiring that when the circumstances of a patient entitling him to relief became known, notice should be given to the directors of the poor, or their steward, within three weeks after such knowledge."

The verdict and judgment were for the defendants, whereupon the plaintiff took a writ of error.

Mr. Justice Trunkey, in delivering the opinion of the supreme court, says:

"On November 13, 1877, John Mullin fractured his leg, and the plaintiff gave him attendance until the thirty-first of the next month. Mullin was at his home with his wife and children. The plaintiff had visited him in 1875, visited one of his children in March, 1877, and attended his wife prior to the accident, and in confinement afterward; but has not attended the family since February, 1878. Mullin paid him for his services before the accident; has paid nothing since, and about the middle of July, 1881, the plaintiff first discovered that he could not pay the bill from his emphatic declaration that he was not able to pay. Mullin lived in a shanty made of rough boards, hardly fit for anybody to live in, and was a laborer at the rolling mill. The plaintiff charged the services to him because he expected to be paid by him at the time.

"This is the plaintiff's case as narrated by himself. He knew every fact respecting Mullin's ability to pay as well in 1877 as in 1881, except the declaration of inability to pay. He gave the credit to Mullin, and in the words of his counsel, 'he did not intend to charge the county. He had been paid for his visits prior to the emergency by Mullin, and expected to be paid by him for this attendance also.' There is no doubt that Mullin was poor, that the service was necessary, and that had he not been assisted through kindness, or upon his own credit, he must have been cared for at public expense. He had not been in the almshouse, and little appears from which it can reasonably be inferred that he was a pauper in the sense of one who should be maintained by the public. The plaintiff's claim stands on a plane with any other bill for necessities furnished to Mullin at the same time. Many a poor family in every neighborhood in case of sickness or serious injury of its head, needs assistance, which, if not

freely given by neighbors, must be given by the overseers or directors of the poor. The mere fact that there was an emergency is not sufficient to entitle one who gave relief to recover its value from the poor district. If the relief was given as a charity it should so stand. If given on the credit of the recipient, the creditor shall not recover the debt from the poor district, upon finding that his debtor is insolvent. Whether the relief was a gratuity, or a charge to the recipient, or to the district, is to be determined from the evidence.

“When a person is suddenly injured or taken sick, it is the moral duty of every one at hand, who can, to give immediate relief, not stopping to inquire about the helpless person’s ability to reimburse expenses, or to send for the officers having charge of the poor. The persons present may be unwilling or unable to relieve gratuitously. Hence, to secure performance of the duty the law provides that in all such cases where the relief was furnished to a poor person, the overseers or directors of the poor shall pay for the same, upon it appearing that the relief was properly chargeable to the district. It has been authoritatively settled that the legal duty to expend relief springs from the necessity of the pauper; that the law implies a promise from the poor district to pay for his necessary care by a physician or other person in case of emergency; and that the first object of the law is to afford ready relief, and the protection of the treasury a secondary one. Yet, the protection of the treasury is of so much importance that in the greater part of the state, under the general statute, and under many local ones, an order of approval of the relief by two magistrates is a prerequisite to the right of the overseers or directors to make payment. Without such order no action would lie against the district. The time within which it may be obtained is unlimited, but the longer the time after the giving of the relief the more difficult it ought to be to satisfy the magistrates that it was not a gratuity, or was not actually given upon the credit of the person.

"The eighth section of the act of February 27, 1798, authorizes the directors of the poor of the house of employment of the county of Chester, with certain restrictions, to permit any poor person to be maintained without said house. The act of April 17, 1869, gives the directors 'full power and authority by themselves and their agents to extend relief to all poor persons entitled to receive the same,' and takes away jurisdiction of justices of the peace to give any order for relief. Sole authority being vested in the directors, they may make reasonable rules respecting relief of persons outside the house of employment, including cases of emergency. For the reasons given in the charge of the learned judge of the common pleas, it is for the public interest that the directors of the poor have prompt notice of cases of emergency. Rule No. 2, adopted February 20, 1876, allows ample time for giving the required notice after the first attendance or relief rendered to the pauper, with suitable provision when the pecuniary circumstances of the individual relieved are unknown by the physician or other person furnishing the relief. That is a reasonable rule, and is binding upon all persons having knowledge of it.

"How long may a person remain ignorant of the pecuniary circumstances of the recipient of the relief, and hold the district liable by giving the notice within three weeks after obtaining knowledge? Only for a reasonable time, which depends much upon the circumstances of each case. The pecuniary condition of Mullin was as well known to the plaintiff when he rendered the service as at the date of the trial. He knew that Mullin had a large family to support, was a laborer, and living in a house not worth more than five dollars, at least the plaintiff would not give over that sum for the house. Mullin's remark, 'I am not able to pay you, to say the truth, doctor,' indicated that he would use his wages for other purposes. If it added to the plaintiff's previous knowledge of Mullin's poverty, it was too late. What is a reasonable time when the facts are not in dispute, is a question of law. . . .

"The case of the Directors of the Poor *v.* Worthington, 38 Pa. 160, was considered precisely as if under the general statute. An order of relief was obtained from a magistrate, and it was held, as it has been in all like cases, that overseers or directors are 'under obligations to pay, provided an order of approval be obtained afterwards.' And it was said that if the magistrate errs, the remedy is by appeal to the court of quarter sessions. So, in the Directors *v.* Malany, 64 Pa. 144, on the information of Malany, June 9, 1868, an order for relief was made by a justice of the peace, and the plaintiff recovered, for no rules would be superior to the order according to the statute. But at the next session of the legislature justices of the peace were deprived of jurisdiction in such cases, and the rules adopted by the directors in 1876 are not subject to the just criticisms which had been made upon the former rules.

"We are of opinion that the plaintiff's points were rightly answered, and the instructions to the jury free of error." ¹¹

Having a Settlement Therein.

This point will be found fully discussed under Section 9, which points out the different modes of acquiring a settlement.

Act June 25, 1885, P. L. 184.

An Act for the relief and benefit of injured indigent persons, whether resulting in death or not, and to make provision for expenses incurred in taking charge of the same, where such parties are not residents of the county wherein said accidents, or injuries, or deaths may have occurred.

Whereas, Persons are found traveling about from place to place, idle and apparently homeless and without the means of subsistence.

And whereas, Persons of that character are frequently injured, or hurt, or killed: Therefore

¹¹ *Blakeslee v. Chester County*, 102 Pa. 274.

Counties Not Having Poor Houses. P. & L. Dig. 3534, § 105.

Section 1. Be it enacted, etc., That, in all counties of this commonwealth, where poor, or almshouses are not provided by law for indigent persons in and for said counties, and where such individuals are found traveling about, and not residents of said counties, and meet with accidents or injuries, from any cause whatever, so as to render them either temporarily or permanently injured, or a charge, or causing their death, all the expenses so incurred shall be borne by the county in which said accident, or injury, or death may have occurred, and not by the boroughs or townships wherein said accident, or injury, or death did occur. It shall, however, be temporarily the duty when such persons are injured, of the overseers of the poor of said boroughs or townships, wherein such accidents occur, to look after and attend to the wants of all such parties, injured or killed, and, as soon as convenient thereafter, inform the county commissioners, or their regularly authorized clerk of the injuries, or condition, or death of all such parties; and any expenses thereby incurred, by said borough or townships, shall be paid or refunded by the counties, through their county commissioners.

Information to be Given. P. & L. Dig. 3534, § 106.

Section 2. When such accident, or injury, or death occurs, any individual may give the information, to either the borough or township poor authorities, or to the county commissioners, or their authorized clerk, and it shall be the duty of any of those parties so informed to look after and attend to the same.

Penalty—Expenses—Duty. P. & L. Dig. 3534, § 107.

Section 3. Should any of the aforementioned officials, the county commissioners, their regularly authorized clerk, or the overseers of the poor of any borough or township, when notified or informed of the same, neglect or refuse to attend to the duties herein imposed upon them, it shall be considered a misdemeanor in office, for which they shall be liable in law, and for all other neglect or refusals to perform their legal duties as county, borough or town-

ship officials: Provided, That the provisions of this act shall in no wise prevent the county commissioners of said counties so rendering aid and assistance to parties whose residences are elsewhere and can be ascertained, from recovering the same off the localities where the last settlement of said parties is; and it shall be their duty and they are hereby authorized so to do, in the same manner that like claims are now recoverable by one poor district against another: Provided further, That this act shall not apply to the aforementioned counties, which have a poor or almshouse erected for the care of parties of this character: Provided further, That all parts of acts inconsistent herewith be and the same are hereby repealed.

Act June 25, 1885, Construction of.

In a case-stated.

The facts agreed upon for the judgment of the court are that no poor or almshouse has been provided for indigent persons for Clarion county, and that in the month of February, 1886, within the borough of Clarion, a man named M. Moulton, an indigent person, a non-resident of the county, was found traveling about, and had an attack of diphtheria, which so impaired his health as to render him temporarily a charge upon the borough of Clarion. That, under an order of relief, the plaintiff looked after and attended to his wants and furnished him with medical attendance, medicine and other supplies, aggregating \$23.36, and soon thereafter notified the county commissioners of Clarion county of the facts and condition of Moulton. The bill of expenses was served upon the commissioners; payment demanded, and refused. If under the facts stated, the court shall be of opinion that the plaintiff is entitled to recover under the act of June 25, 1885, P. L. 184, then judgment to be entered for the plaintiff, otherwise for the defendant.

Wilson, P. J., said: "The general provisions of the poor laws are intended to provide for all ordinary and normal paupers and such as become so from the ordinary causes of sickness and poverty.

The act of June 25, 1885, is intended for a class of emergent cases not springing from sickness or poverty, which, in every period of life, and without any extraordinary causes, are incident to every one. The title of the act is: 'For the relief of injured indigent persons.' Its preamble speaks with reference to the homeless, injured, hurt or killed. Its first section, by the use of the language, 'temporarily injured, or a charge,' would seem to enlarge the previous language to every caste of charge, but the second again limits it by the use of the language 'when such accident or injury or death occurs.' Hence, from a construction upon the entire language of the title, the preamble of the act, taken in connection with the fact that it is exceptional and emergent legislation, it would seem it was not intended to include cases of sickness where there was no injury or hurt from external causes, but is confined to accidents, injuries, or hurt from some cause external. This view is corroborated by the fact that the words sickness and disease in no instance occur in the act, and yet are so common to humanity that, had it been intended to include them, it is highly improbable words indicative of such intent would have been omitted unless it was the intent of the legislature not to include them in the provisions of the act." Judgment was entered for defendant.¹²

Epidemics and Contagious Diseases.

The question whether the poor directors are bound to receive indigent paupers afflicted with contagious diseases, at the poor house, was raised in the court of common pleas of Northampton county on a case-stated between the borough of South Bethlehem, in said county, and the poor directors of the county.

We give an abstract of the facts as set forth in the case-stated:

On or about March 12, A. D. 1882, an epidemic, known

¹² Overseers of Clarion Borough v. Clarion County, 1 Pa. C. C. R. 593.

as the small-pox, broke out in said borough, which continued for two months. A number of the sick were, upon orders of relief, transferred from said borough to the county poor house, in charge of the defendants. That on March 16, 1882, the steward of said institution gave verbal notice to plaintiff's agent, that their small-pox hospital was full of patients, and that they could receive no more at the house, which necessitated immediate steps on the part of plaintiffs to provide for the sick and for the suppression of the disease. That on March 18, 1882, the defendants published the following notice:

"The small-pox hospital at the Northampton County Alms-house, being full of patients, we are compelled to give notice that no more cases can be received at this time."

The said notice was not recalled during the two months the epidemic lasted. That all the cases treated in the hospital of defendant, as well as two-thirds of those treated outside, but within the borough limits, were indigent poor persons, or rendered so for the time being by the disease. The orders of relief were taken out in all cases until the verbal and printed notices aforesaid were given.

That in consequence of the foregoing facts, the plaintiffs were put to great expense for the erection of hospital buildings, for the reception, support, maintenance, medicines, attendance and nursing those afflicted with the disease and for the burial of the dead, as well as for the establishment of an extra police to enforce the health ordinances of the borough, and for fumigating to prevent the spread of the disease. The case-stated was accompanied by a bill of items amounting in the aggregate to \$6,985.18. The poor directors admitted their liability to pay certain items in the bill aggregating \$1,517.81, but denied all liability on the remainder of the bill, contending that the same came strictly within the duties of the police and board of health of the borough.

It was argued that the small-pox was a nuisance, and as such it was the duty of the police and board of health to abate

it, that moving it from one locality to another was not abating it. That the indigent poor were entitled to the same amount of care and protection against contagious diseases as the wealthy.

By the Court: "The defendants admit their liability to reimburse the plaintiff for moneys expended as per annexed statement amounting to \$1,517.81. The learned counsel for the plaintiff has failed to point out any acts of assembly or to direct us to any authority which would justify us in enlarging that liability. In our opinion no such act of assembly or authority can be found. Judgment is therefore entered on the case-stated in favor of the plaintiff for \$1,517.81. with costs." ¹³

This case has never been reported.

Act June 27, 1861, P. L. 120.

An Act regulating the election of overseers of the poor.

Section 1. Be it enacted, etc., That on the third Tuesday of February, Anno Domini one thousand eight hundred and eighty-two, the qualified electors of each borough, ward and township within this commonwealth shall elect two persons overseers of the poor, the one receiving the highest number of votes to hold his office for the term of two years and the one receiving the next highest number of votes to hold his office for the term of one year, and annually thereafter they shall elect one person overseer of the poor to hold his office for the term of two years: Provided, That this act shall not apply to counties having county poor houses managed by directors elected for that purpose or by the commissioners of said county, nor to poor districts having poor houses managed by directors of the poor: Provided, That in districts, where by existing laws overseers or directors of the poor are elected as provided in this act, only one overseer or director of the poor shall be elected on the second Tuesday of February, Anno Domini one thousand eight hundred and eighty-two, and annually thereafter as herein provided.

¹³ South Bethlehem Borough v. Poor Directors of Northampton County, C. P. Northampton Co.

Section 2. All acts or parts of acts inconsistent herewith be and the same are hereby repealed.

See following act of June 4, 1883, for amendment.

Act June 4, 1883, P. L. 66. P. & L. Dig. 3526, § 80.

An Act amending an Act entitled, "An act regulating the election of overseers of the poor."

Section 1. Be it enacted, etc., That the first section of an act, entitled "An act regulating the election of overseers of the poor," which is as follows:

"That on the third Tuesday in February, Anno Domini one thousand eight hundred and eighty-two, the qualified electors of each borough, ward and township within this commonwealth, shall elect two persons overseers of the poor, the one receiving the highest number of votes to hold his office for the term of two years, and the one receiving the next highest number of votes to hold his office for the term of one year, and annually thereafter they shall elect one person overseer of the poor, to hold his office for the term of two years: Provided, That this act shall not apply to counties having poor houses managed by directors elected for that purpose, or by the commissioners of such county, nor to poor districts having poor houses managed by directors of the poor: Provided, when, by existing laws, overseers or directors of the poor are elected as provided in this act, only one overseer or director of the poor shall be elected on the second Tuesday of February, Anno Domini one thousand eight hundred and eighty-two, and annually thereafter as herein provided," be so amended to read as follows:

Section 1. Be it enacted, etc., That on the third Tuesday of February, Anno Domini one thousand eight hundred and eighty-two, the qualified electors of each borough and township within this commonwealth, shall elect two persons overseers of the poor, the one receiving the highest number of votes to hold his office for the term of two years, and the one receiving the next highest number of votes to hold his office for the term of one year, and annually thereafter they shall elect one person overseer of the poor, to hold his office for the term of two years: Provided, That this act shall not apply to counties having county poor houses managed by

directors elected for that purpose, or the commissioners of such county, nor to poor districts having poor houses managed by directors of the poor."

Section 2. All acts or parts of acts inconsistent herewith are hereby repealed.

Act June 24, 1885, P. L. 163. P. & L. Dig. 3525, § 76.

An Act to provide for filling vacancies in the office of director of the poor.

Section 1. Be it enacted, etc., That, whenever a vacancy has occurred, in the office of director of the poor elected by the people, since the last general election by death, resignation or otherwise, or shall hereafter so occur, the director elected, at the next general election to fill such vacancy, shall serve for the unexpired term of the person, whose death, resignation or other act caused such vacancy; and on each of the ballots, voted to fill such vacancy, shall be written, or printed the words, "For the unexpired term" over the name of the candidate for such unexpired term; and all acts or parts inconsistent herewith are hereby repealed.

Poor House Lands Not Taxable for Township Purposes.

The question arose whether the real estate comprising poor house lands, was taxable for road or township purposes.

Gordon, J., delivered the opinion of the court: "We agree with the learned judge below that the property in question belongs to a public charity, and as such is not taxable for road purposes by the township of Cumru. Not indeed, because the special act of April 5, 1848, authorizing real estate of the county of Berks within the said township, to be taxed for road purposes, has been repealed by the general act of 1874, but because the property in question does not belong to the county. By the act of March 24, 1824, a distinct municipality was erected, whose jurisdiction in pauper cases was commensurate with the territorial limits of the county, and whose franchises were to be administered

by three elective officers, designated in said act as 'directors of the poor and house of employment for the county of Berks.' These, by the statute, were constituted a body politic with perpetual succession, and were authorized to take and hold any lands or tenements within the said county, in fee simple or otherwise, 'and erect suitable buildings thereon for the reception, use and occupation of the poor of the same county.' It certainly does not matter that the money used for the purchase of the land and the erection of the buildings was raised by assessments made by the county commissioners, for the money thus raised was intended for the use of the poor district, and the municipality known as 'Berks county' had no interest or control over it, or the property it was used to purchase. That the taxes were to be assessed and collected by the county officers did not make the money thus raised any more the property of the county than does the assessment and collection of state taxes, by the same instrumentality, invest the county with the right thereto. In the one case these officers are trustees for the poor district, and in the other for the state. We repeat, therefore, the land and the buildings in question were exempt from township taxation, not because of the repeal of the act of 1848, for we do not believe that the act of 1874 worked any such result, but because the property belonged to the poor district and not to the county."¹⁴

County Commissioners Must Honor Drafts of Poor Directors for Money.

On petition for mandamus against commissioners to pay draft of directors to meet current expenses, and which was refused, the court below granted the mandamus, and upon appeal the supreme court, Green, J., says:

"The learned court below was clearly right in awarding

¹⁴Township of Cumru v. Directors of the Poor of Berks County, 112 Pa. 264.

the writ of peremptory mandamus in this case. The act of March 11, 1837, P. L. 45, which established the directors of the poor of the county of Northampton, erected them into 'one body politic corporate in law to all intents and purposes, relative to the poor of Northampton county.' They were clothed with the right of perpetual succession, to sue and be sued, plead and be impleaded, to take and hold lands and tenements, and to erect suitable buildings for the reception, use and accommodation of the poor of the county, and 'to provide all things necessary for the lodging, maintenance and employment of said poor,' and to appoint a treasurer, steward, matron and physician and all other necessary attendants that may be necessary 'for the said poor respectively.' Other powers and duties were conferred and imposed upon them essential to the proper discharge of their official functions. By the fifth section of the act it was provided as follows: 'It shall be the duty of the said directors on or before November 1 in each and every year to furnish the commissioners of said county with an estimate of the probable expense of the poor and poor house for one year, and it shall be the duty of said commissioners to assess and cause to be collected the amount of said estimate which shall be paid to said directors by the county treasurer on warrants drawn in their favor by the county commissioners as the same may be found necessary.'

"It is very apparent that the entire business of caring and providing for the poor of the county was devolved by the act upon the directors of the poor, and it follows hence, that they and they alone, were required by the positive terms of the law, as well as by the plain necessities of the case, to fix and determine the annual amount that would be required for the support and maintenance of the poor. It would be impossible for the commissioners of the county to discharge this duty, for the simple reason that they do not possess any powers or qualifications necessary for that purpose, and the argument that they should be the judges of the necessity for

the issuing of the warrants for the payment of the moneys required by the directors of the poor is entirely untenable. It has no foundation upon which to rest. Moreover, the plain meaning of the act is that the directors must determine the amount of the annual requirement and furnish it to the commissioners to assess and collect the amount and pay it to the directors by means of warrants drawn on the county treasurer for that purpose. No discretion whatever is conferred upon the commissioners to review the action of the directors. Their duty is simply ministerial and in no sense judicial. They must collect the money by assessment and taxation as part of the county levy, and when collected they have no right in it or control over it. They have no right under the law to exact any sums more than are necessary for the purpose indicated and would be at once responsible for an abuse of their powers if they attempted to do so. Extended argument is unnecessary as the question at issue is very plain. In constructing a similar act for the county of Berks, in the case of *Township of Cumru v. Directors of the Poor for the County of Berks*, 112 Pa. 264, we said, Gordon, J.: 'It certainly does not matter that the money used for the purchase of the land and the erection of the buildings was raised by assessment made by the county commissioners, for the money thus raised was intended for the use of the poor district, and the municipality known as Berks county has no interest in or control over it. That the taxes were to be assessed and collected by the county officers did not make the money thus raised any more the property of the county than does the assessment and collection of state taxes, by the same instrumentality, invest the county with the right thereto. In the one case these officers are trustees for the poor district, and in the other for the state.' We see no error in the ruling of the learned court below, and therefore sustain the decree."¹⁵

¹⁵ *Commonwealth ex rel., Kostenbader et al. Directors of the Poor, etc., v. Coyle et al. Commissioners of Northampton County*, 185 Pa. 198.

Act July 9, 1897, P. L. 222.

Authorizing contracts to be entered into between the overseers of the poor of any borough or township in counties not having poor houses, and the authorities in charge of the poor in adjoining counties having county poor houses, for the maintenance of the poor of such boroughs and townships, fixing the rate of compensation therefor, and the method of collecting the same.

Directors May Make Contracts for Support. P. & L. Dig. Sup. 465, § 3.

Section 1. Be it enacted, etc., That the overseers of the poor in each borough and township in the commonwealth, in all counties not having county poor houses, are hereby authorized to contract with the authorities in charge of the poor in any adjoining county having a county poor house, for the maintenance of the poor of such boroughs and townships, and to remove such poor to the poor house of such county.

Section 2. The authorities in charge of the poor in all counties having county poor houses, are hereby authorized to enter into contracts for the maintenance of the poor of any borough or township of any adjoining county, not having a county poor house, and to receive and maintain the poor of such boroughs and townships in the same manner as the poor of said county having such county poor houses are maintained, at the expense of the poor districts of said boroughs and townships, and to charge therefor a sum not exceeding the per capita cost of maintaining their own poor, and the same shall be collectible in the same manner as costs and charges on an order of removal are now by law collectible.

Bond of Indemnity.

“Formerly, the commonwealth was divided into cities, boroughs, districts and townships, each of which had its overseers of the poor, who were incorporated by ‘An act for the relief of the poor,’ passed March 9, 1771. In most parts of the commonwealth the organization still prevails, but altera-

tions, in particular places, have been made from time to time. An alteration was made in Dauphin county, by an act passed March 28, 1806, entitled 'An act to provide for the erection of a house for the employment and support of the poor in the county of Dauphin.' By this act the management of all affairs, respecting the poor of the county, was vested in three directors, to be chosen in the manner prescribed by the act; and these directors were made a body corporate, by the name of 'The directors of the poor, and of the house of employment for the county of Dauphin.' The whole system was changed, and the poor, instead of being kept and supported in their respective townships, were sent to one poor house, which served for the whole county, and there supported. The funds necessary for the support of all the poor in the county, were raised by tax on the whole county, and all former laws, inconsistent with this new system, were, so far as related to the poor of the county of Dauphin, repealed. Thus all subdivisions of the county were annulled, and it could no longer be said, that any particular borough or township was damnified. When a pauper was to be supported, the county was damnified, and not the borough or township, in which the pauper happened to be, when first he became chargeable. It appears, then, that the borough of Harrisburg could not be damnified by the maintenance of this bastard, any more than other parts of the county. The sentence, therefore, should have been to indemnify the county of Dauphin. An order to indemnify the borough of Harrisburg is nugatory, because Harrisburg, as a borough, cannot be damnified. For this reason the court is of opinion that the judgment is erroneous, and should be reversed."¹⁶

A bond given to A. and B., who were directors of the poor, may be sued in their names for the use of the directors of the poor, though they constituted a body corporate.¹⁷

¹⁶ *Dorsey v. the Commonwealth*, 8 S. & R. 261.

¹⁷ *Greenfield et al. v. Yeates et al.*, Directors of Franklin County, 2 Rawle, 158.

Where a bond is directed by statute, to be taken by a corporate body, but no form is prescribed, it is good, though taken in the name of individual members, as obligees.¹⁸

April 17, 1866, P. L. 110.

An Act relating to poor houses and lands.

Erection of Additional Buildings. P. & L. Dig. 3520, § 60.

Section 1. Be it enacted by the Senate and House of Representatives of the commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same.

That in all cases where a poor house, or houses, has been, or hereafter shall be, erected in any county, or counties, under any law of this commonwealth, and the said buildings are found insufficient for the purpose of comfortably sheltering and maintaining the poor, sick, or insane, of the proper county, it shall be lawful for the poor directors to erect new or additional buildings, for such purposes, or for hospitals, to prevent the spread of infectious diseases among those sent to such institutions: Provided, That before erecting any such new, or additional, buildings, the construction thereof shall be recommended by the grand jury and the court of quarter sessions of the proper county.

Purchase of Additional Lands. P. & L. Dig. 3520, § 61.

Section 2. Where the land connected with any poor house, within the state, shall be deemed insufficient for the comfortable and profitable maintenance and occupation of the poor, or where the land connected therewith shall be found to be useless, unnecessary or unprofitable, it shall be lawful, in the first-named instance, for the poor directors, on the recommendation of a grand jury, and the court of quarter sessions, of the proper county, to purchase such additional quantity of land, not exceeding two hundred acres, and to take a deed, or deeds, therefor, in the name of the county, as shall be thought necessary; and in the second named in-

¹⁸ Greenfield et al. v. Yeates et al.. Directors of Franklin County, 2 Rawle. 158.

stance, on like recommendation, to sell, at public sale, after due notice, such part of the land held, as shall be thought necessary and unprofitable to be held, and execute a deed, or deeds therefor, to the purchaser.

Poor Directors May Not Restore Burnt Buildings.

"By act of March 16, 1830, P. L. 105, the defendants, directors of the poor of Lebanon county, were empowered to purchase lands and erect suitable buildings thereon for the poor of that county, and directed to make annual estimates thereafter for the probable expense of the poor and poor house for each year. One of the buildings erected in pursuance of the act having been burnt down in 1874, the defendants were enjoined, at the suit of the county commissioners, from proceeding to rebuild it, the court holding that the power to build, given by the act, was exhausted when once exercised, and did not contain impliedly the power to rebuild. There is no power to build new or additional houses."¹⁹

But see the following act of April 10, 1879, and the supplement of June 4, 1879.

Act April 10, 1879, P. L. 19.

An Act to authorize the directors of the poor and poor houses, in the several counties of this commonwealth, to rebuild any poor houses in the respective counties, where said poor houses have been or may hereafter be burnt down by fire, and to authorize the county commissioners in such counties to levy and collect the taxes necessary to pay the expenses of such rebuilding.

Directors May Rebuild. P. & L. Dig. 3519, § 53.

Section 1. Be it enacted, etc., That the poor house directors of any county in this state, where a poor house has heretofore been erected, and the same has been or may hereafter be destroyed by fire, are authorized and empowered, and it shall be lawful for the said poor house directors, to re-

¹⁹ Light et al. v. Hauck et al., 2 W. N. C. 5.

build the buildings so destroyed by fire, or to erect suitable buildings proper to accommodate both the sane and insane poor when a public charge.

County Commissioners to Levy Tax. P. & L. Dig. 3519, § 54.

Section 2. The county commissioners of the respective counties, when such buildings have been or may hereafter be destroyed by fire, shall have the power, and it shall be their duty, to assess, levy and collect, together with the other county rates and levies, and on the same subjects of taxation, on estimate furnished by the poor house directors, an amount sufficient to furnish the necessary funds to erect said buildings and furnish the same, in connection with any sum or sums of money received by said poor house directors from insurance on said buildings so destroyed by fire or from any other source.

Allowance for Expenses. P. & L. Dig. 3519, § 55.

Section 3. Each of said directors, in addition to the amount allowed by law, shall be entitled to such further reasonable sum as the court of quarter sessions shall deem just and proper for their special responsibility and expense in rebuilding, not however to exceed the sum of two hundred dollars to each director for any one year.

County Commissioners to Approve Plan. P. & L. Dig. 3519, § 56.

Section 4. The plans and specifications for any buildings authorized by this act to be erected, shall first be submitted to and approved by the county commissioners of the county, and any contract for the erection of such building or buildings made by the directors of the poor with any contractor or contractors, or for furnishing the necessary materials for the same, shall have the approval of the county commissioners of the proper county before such contract or contracts become binding and operative.

Directors to Give Bond.

Section 5. The directors of the poor, before proceeding to exercise the powers conferred by this act, shall give bond to

the county, in such sum as the court of quarter sessions shall deem proper, with sufficient security to be approved by said court, conditioned for the faithful performance of the duties of their office.

Viewers to be Appointed, Etc.

Section 6. Whenever the said buildings shall be finished and completed, the said directors shall notify the said court, who shall thereupon appoint three competent and disinterested persons viewers to view and thoroughly examine said buildings, and report to the court whether said contract or contracts have been faithfully and fully performed and completed, and until such report shall be so made final payment on such contract or contracts shall not be made and paid. The said viewers shall be entitled to three dollars per day for each day necessarily engaged in the performance of their duties.

Act June 4, 1879, P. L. 93.

A supplement to an act to authorize the directors of the poor and poor houses, in the several counties of this commonwealth, to rebuild any poor houses in the respective counties, where said poor houses have been or may hereafter be burned down, and to authorize the county commissioners in such counties to levy and collect the taxes necessary to pay the expenses of such rebuilding, approved nineteenth day of April, one thousand eight hundred and seventy-nine, amending the fifth section of said act in regard to the bonds to be given by the directors.

Directors to Give Separate Bonds. P. & L. Dig. 3519, § 57.

Section 1. Be it enacted, etc., That section five of an act, entitled "An act to authorize the directors of the poor and poor houses, in the several counties of this commonwealth, to rebuild any poor houses in the respective counties, where said poor houses have been or may hereafter be burnt down, and to authorize the county commissioners in such counties to levy and collect the taxes necessary to pay the expenses of such rebuilding," approved nineteenth day of April, one

thousand eight hundred and seventy-nine, which reads as follows: "The directors of the poor, before proceeding to exercise the powers conferred by this act, shall give bond to the county, in such sum as the quarter sessions shall deem proper, with sufficient security, to be approved by said court, conditioned for the faithful performance of the duties of their office," shall be and the same is hereby amended to read, "before proceeding to exercise the powers conferred on them, by the act to which this is a supplement, each of said directors shall give a separate bond to the county, in such sum as the court of quarter sessions of said county shall deem proper, with sufficient security, to be approved by said court, conditioned for the faithful performance of the duties of his office."

Loans to Overseers Illegal.

"The plaintiff, Lewis C. Gibson, instituted an action of assumpsit against the poor district of Plumcreek, for the purpose of recovering from that district the sum of \$440, loaned by him, on January 28, 1884, to its overseers. The facts of the case as they appear from the evidence, are as follows: On June 4, 1877, an appeal was taken from an order of removal of a pauper from the said district to the Rayne township poor district, in the county of Indiana. This appeal was finally determined by the quarter sessions of Armstrong, against the Plumcreek district, and on taxation of the costs and charges due Rayne they were found to amount to \$420.86, which sum the court ordered the defendant to pay, and for this purpose the money, as above stated, was borrowed from the plaintiff. The counsel for the defendant insisted that this borrowing was not the result of the joint action of the overseers, but the act of one only. This fact, however, if fact it be, we pass as of no moment in the final disposition of this contention, for the material question, and the one on which the court below put its decision, was that which involves the power of the overseers to bind their district for borrowed money. The powers of these officers are very strictly limited by the various acts of assembly relating to the maintenance of the poor, and except in rare and special

cases, they cannot step beyond the letter of those acts. We agree, however, with the counsel for the plaintiff, that occasionally circumstances may arise when, in order to give effect to the statutes, we must go beyond their letter. But this is allowable in special emergencies only, as where medical aid or other assistance is imperatively required before a relief order can be obtained, examples of which may be found in 38 Pa. 160 and 64 Ib. 144. But even then the rule of the law is only partially relaxed, for without a subsequent order no action can be sustained against the poor district. We will not undertake to say that in cases of necessity the overseers might not contract for supplies or even borrow money, but without the approval of two justices they would not be allowed to collect such money or the cost of such supplies from the taxpayers of the district. How, then, stands the plaintiff? His case is not backed by an order of relief, nor did he aid the defendant when laboring under an imperative emergency. He must depend alone on an order of the court; but this order created no such pressing necessity as required the overseers to contract a debt in relief of their district. It constrained them to proceed only within the strict lines of the statute, and the quarter sessions would doubtless have imposed upon them no undue urgency or haste. From what we have said it follows that the action of the overseers in borrowing the money in controversy from the plaintiff was without warrant of law, and cannot bind the district. Whilst the case is a hard one for the plaintiff who honestly advanced his money for, as he supposed, the relief of the township, yet it would be out of all character to allow the officers of a minor municipality, like the defendants, without the authority of the court, people, justices or auditors, to saddle the citizens of their several districts with debts which ought not to have been contracted, or, which, when contracted should be provided for in a manner prescribed by the statute. Affirmed."²⁰

²⁰ Gibson v. Plumcreek Poor District, 22 W. N. C. 512.

May Not Make Donations.

The directors of the poor drew orders on the county treasurer "for donations" to charities, which the treasurer paid.

The supreme court, Woodward, C. J., said: "The orders paid by the treasurer of the county were illegal on their face, and therefore brought home notice to him of the want of authority in the directors of the poor to order the payment. The complaint that the county auditor improperly passed by the directors in their settlement is just, perhaps, but it does not follow that they should allow an illegal payment in the account of the treasurer."²¹

Compensation of Poor Directors.

On an appeal from the report of county auditors to C. P. Mercer County, 1885. The court said: "The county auditors have surcharged A. B. Blatt, James Satterfield and J. C. Campbell with \$240.60, the amount of credit claimed by them in their account as directors of the poor of Mercer county for traveling expenses. From the auditor's report it appears that this amount is made up as follows:

"Railroad fare to and from regular meetings of the directors,	\$20 00
"Livery hire in attending to business of the county within the scope of their duties,	32 00
"General traveling expenses over the county looking after and investigating outside paupers and attending to other business for the county and within the scope of their legal duties, and made up of boarding, railroad fare, hack hire, horse hire and feed,...	188 60
"Total,	<hr/> \$240 60

²¹ *Merkel v. County of Berks*, 2 W. N. C. 87.

"This, as it appears from the auditor's report, is a surcharge in addition to the per diem of \$3 for each day spent by appellants in the discharge of their duties as directors of the poor. Are the appellants entitled to this additional amount, or are they justly surcharged therewith by the county auditors?

"The act of assembly, approved March 22, 1850, P. L. 239, created the corporation of which appellants were directors by the style and title of 'The directors of the poor and of the house of employment for the county of Mercer.' This is a public corporation created to have certain powers and faculties, and to perform certain functions in the administration of municipal economy. There is, therefore, no implied obligation on the part of the corporation or of the county of Mercer to make compensation to its directors. If the right exists, it must be expressly given by law. The directors of the poor are deemed to have accepted their office with the knowledge of, and with reference to, the provision of the charter or incorporating statute relating to the services they may be called upon to render and the compensation provided therefor: 1 *Dillon's Mun. Corp.* 230, 3d ed.; *Smith v. Com.*, 41 Pa. 335; *Bladen v. Phila.*, 60 Pa. 464; *Phila. v. Given*, 60 Pa. 139.

"This being the law, the inquiry here is simply: What provision has been made by the legislature for the compensation of the directors of the poor of Mercer county? The incorporating statute (Section 12) provided that 'the said directors shall each of them receive for their services the sum of \$1 per day for each and every day actually employed, to defray the expenses of their necessary attendance in the duties of their office.' By the act of 1871, P. L. 14, this was increased to \$3 a day. In view of this provision in the act of assembly, the answer to the question involved in this case seems plain. The directors of the poor are entitled to receive \$3 per day for each and every day actually employed to defray the expense of their necessary attendance in the duties

of their office.' They are not, therefore, entitled to \$3 per day and their expenses in addition thereto.

"It is argued, in behalf of the appellants, that the most of the expense charged for was incurred in discharge of duties not specially imposed by the incorporating statute, or any of its supplements; as, for instance, traveling to remote parts of the county to investigate applications for relief, traveling to other counties to investigate cases of paupers sent to this district, and the like. For this reason it is urged that, as the expenses were incurred for the benefit of the district, it is inequitable that they should be borne by the directors personally. To this the answer is that the limit of appellants' rights to compensation is the provision expressly made by law, whether it be adequate or inadequate. It is apparent that the legislature considered that \$3 per day would be sufficient to defray their necessary expenses. Compensation beyond this was not intended. If that proves insufficient, the remedy must be sought by applying to the law-making power; 'for services rendered by public officers do not, in this particular, partake of the nature of contracts, nor have they the remotest affinity thereto. As to stipulated allowance, whether annual, per diem or particular fees for particular services, depends on the will of the lawmakers.' *Com. v. Bacon*, 6 S. & R. 322; *Bussier v. Pray*, 7 S. & R. 447; and see *Kilpatrick v. Ferry Bridge Co.*, 49 Pa. 118. In this connection we cannot do better than quote the language of Judge Dillon as used in Section 233 of his work on *Municipal Corporations*: 'It is a well settled rule that a person accepting a public office, with a fixed salary, is bound to perform the duties of the office for the salary. He cannot legally claim additional compensation for the discharge of these duties, even though the salary be very inadequate remuneration for his services. Nor does it alter the case that by subsequent statutes or ordinances his duties within the scope of the charter-powers pertaining to the office are increased and not his salary. Whenever he considers his compensation inadequate, he is at

liberty to resign. The rule is of importance to the public. To allow charges and additions in the duties properly belonging, or which may properly be attached to an office, to lay the foundation for extra compensation, would soon introduce intolerable mischief. The rule, too, should be rigidly enforced. The statutes of the legislature and the ordinances of our municipal corporations seldom prescribe with much detail and particularity the duties annexed to public offices, and it requires but little ingenuity to run nice distinctions between what duties may, and what may not, be considered strictly official; and if these distinctions are much favored by courts of justice, it may lead to great abuse.'

"It is not doubted that the expense charged for was actually incurred, or that the rates were reasonable, or the duties were well and faithfully performed by the appellants as directors of the poor; but we find no provision for their compensation beyond the fixed allowance of \$3 per day for each and every day actually employed, to defray the expense of their necessary attendance in the duties of their office.

"Therefore, the action of the county auditors surcharging appellants with \$240.60 is approved and the report confirmed, and it is ordered that judgment be entered against A. B. Blatt, James Satterfield and J. C. Campbell, the appellants, and in favor of the county of Mercer, Pa., for the sum of \$240.60 and the costs of this appeal." ²²

The preceding case was decided upon special laws, enacted for Mercer county, but the principles laid down by the learned judge are sound, and must govern all such cases, no matter where they arise. The compensation of poor directors is fixed by their charters, in every county where poor houses exist. In many, however, this compensation was subsequently changed by special legislation. Still, the principle remains. The following acts fix the compensation, etc., of poor directors in counties having no special laws for that purpose.

²² Blatt's Ap., 7 Pa. C. C. R. 149.

Act May 13, 1889, P. L. 200. P. & L. Dig. 3522, § 66.

An Act regulating the payment of traveling expenses of directors of the poor and county commissioners within this commonwealth.

Section 1. Be it enacted, etc., That from and after the passage of this act, directors of the poor and county commissioners of this commonwealth shall be allowed their traveling expenses necessarily incurred in the discharge of their official duties, and the same shall be paid on warrants drawn in their favor on the county treasurer out of the county funds: Provided, That this act shall not apply to poor directors in counties having local or special laws, under which each poor director is allowed an annual compensation of one hundred and fifty dollars or more.

P. & L. Dig. 3522, § 67.

Section 2. So much of all general acts heretofore passed as are inconsistent herewith are hereby repealed, but this act shall not apply to any local law regulating the same.

Act July 14, 1897, P. L. 268. P. & L. Dig. Sup. 464, § 1.

An Act fixing the salaries and traveling expenses of directors of the poor in counties of this commonwealth having a population of five hundred thousand or more, and regulating the payment thereof.

Section 1. Be it enacted, etc., That from and after the passage of this act each director of the poor of all the counties of this commonwealth having a population of five hundred thousand or over, shall receive such sum as may be fixed by the salary board, not exceeding three dollars for every day necessarily spent, and three cents circular for each mile exceeding one mile necessarily traveled by him in the discharge of the duties of his office.

P. & L. Dig. Sup. 465, § 2.

Section 2. So much of all local or special laws heretofore passed as are inconsistent herewith are hereby repealed.

Vacancy in Board of Directors.

"The act of March 16, 1866, P. L. 230, being a supplement of the act of April 9, 1862, P. L. 352, incorporating what is now designated as the Scranton Poor District, provides that 'Whenever any vacancy shall occur in the board of directors created in pursuance of the act of which this is a supplement, whether such vacancy occur by the expiration of the term of office or otherwise, the same shall be filled by appointment of the president judge of Luzerne county at a regular term of court.' Owing to the death of John Stewart, Esq., a vacancy has occurred in the board of directors, which I am petitioned to fill. May term was the regular term of court since the occurrence of the vacancy, and it was then my duty, if former precedents were to be followed, to fill the same.

"Ever since the division of Luzerne county there has been a serious doubt as to the power and duty of the president judge of this county to act in the premises. In the case of *Com. ex rel. Snover v. Stewart*, 6 Law Times, new series, 159, the question was raised as to whether or not the office was to be filled by an election or by appointment; and it was there decided by Judge Hand that the office was to be filled by appointment. But the question as to the power and duty of the president judge of this county to make the appointment was not necessarily raised by the pleadings in that case, and therefore was not decided.

"This is in our opinion a more important question than the former. It has been held in a number of cases that local laws, applying to Luzerne county by name, remained in force in Lackawanna county after this division. As an example, in the case of *Lackawanna County v. Stevens*, it was held that the act of 1873, which provided that the sheriff of Luzerne county should be entitled to receive the sum of one dollar for each jury notice served, applied to the county of Lackawanna after the division, and that under the act the sheriff

of Lackawanna was entitled to the fee mentioned. That case was taken to the supreme court and was affirmed. The supreme court say: 'The act of April 9, 1873, applied to the county of Luzerne only; it was therefore special in its provisions and extended to the whole territory within the limits of its boundaries.' 105 Pa. 465. There are other cases referred to in the report of the argument of counsel in that case which decide the same principle; and it is contended, and we think with a great deal of force, that if this act of 1866 is still in force, the duty of making the appointment devolves not upon the president judge of Luzerne county, but upon the president judge of Lackawanna county. At all events, we are of opinion that the question is of such a serious nature that it is our duty, notwithstanding we have heretofore made appointments under this act, to take now a decided stand with regard to it. We have heretofore made appointments that the affairs of the district would be thrown into confusion if we did not do so, and because it was expected that the question would be settled by appropriate legislation. Whether I was wise in not taking a more decided stand heretofore is not a matter of much importance at this time; it is enough to say that the expectations as to appropriate legislation upon the subject have not been realized, and that I now feel it to be my duty to put the matter in such shape that the question as to the power and duty of the president judge of this county may be authoritatively decided by the supreme court. It is not right that this matter should go on indefinitely, and the question can be raised now without serious embarrassment, and a decision can be obtained before the next meeting of the legislature, when legislation can be had if it should be found to be necessary.

"For these reasons I decline to make the appointment." ²³

²³ In re Scranton Poor District, 5 Luz. Leg. Reg. 510.

Act April 29, 1867, P. L. 95. P. & L. Dig. 4411, §10.

A supplement to an act to prevent the sale of intoxicating liquors on the first day of the week, commonly called Sunday. approved February twenty-six, one thousand eight hundred and fifty-five.

Fines for Selling Liquors on Sunday.

Section 1. Be it enacted, etc., That all penalties, fines and forfeitures imposed, incurred, or paid, under the act to which this is a supplement, except so far as part thereof is payable to the prosecutor, shall be paid over to the guardians, directors, or other representatives of the poor, of the city, district or county, in which the offence was committed.

CHAPTER III.

OVERSEERS MUST PROVIDE WORK.

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Overseers to Provide Work. P. & L. Dig. 3531, § 96.

Act of 1836, Section 2. If such poor person be able to work, but cannot find employment, it shall be the duty of the overseers to provide work for him, according to his ability, and for this purpose they shall procure suitable places and a sufficient stock of materials.

This section is so plain that up to the present time no judicial construction has been required. Nearly all the poor houses in the commonwealth have land connected with them, upon which those who are able, are employed in its cultivation, others are employed at various trades, and house-work.

May Employ Poor on Roads. P. & L. Dig. 3531, § 97.

Act of 1836, Section 3. It shall be lawful for the overseers of any district, with the concurrence and under the direction of the supervisors of the township, to employ such poor person, being a male of sufficient ability, in opening or repairing any road or highway within the district.

This, like the preceding section, has never received any judicial construction, its object being too obvious to require it.

When Unable to Work. P. & L. Dig. 3531, § 98.

Act of 1836, Section 4. If such poor person by reason of age, disease, infirmity, or other disability, be unable to work, it shall be the duty of the overseers to provide him with the necessary means of subsistence.

The decisions applicable to this section will be found under the first section of this act.

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Act of 1836. P. & L. Dig. 3531, § 99.

Section 5. It shall also be the duty of the overseers of any district, to furnish relief to every poor person within the district not having a settlement therein, who shall apply to them for the relief, until such person can be removed to the place of his settlement.

Must Furnish Relief to Such as Have no Settlement, Etc.

There was no direct provision for cases such as are contemplated by the fifth section, under the act of 1771, hence this clause. The controversy that arose under this section has led to much litigation between the authorities of the different districts.

"A pauper had gained a settlement in Milton by hiring. She then married a man who had acquired a settlement in Chester county. After her marriage she became somewhat deranged in mind, and was found in Milton requiring assistance. The overseers of Milton wrote to the overseers of Williamsport, alleging she was chargeable to that township. No answer was received, but the pauper was permitted to wander to Berlin, and thence to Williamsport, where she was found in a destitute condition, and removed under an order to Milton. From this order Milton appealed."

Burnside, J.: "The evidence is satisfactory that the pauper had gained a settlement in Milton, by hiring before her marriage: *Lewistown v. Granville*, 5 Pa. 283. If the evidence of her husband is believed, he had a settlement in Chester county, which by the marriage became her settlement, as the tenth section of the act of 1836, Dunlop, 682, provides 'that every married woman shall be deemed during coverture, and after her husband's death, to be settled in the place where he was last settled.' If the overseers had been disposed to regard the law, it could have been easily ascertained whether the husband's statement was true.

"But the case was put by the sessions on other ground. The pauper seems to have been deserted by her husband, and to have been partially deranged. She required relief in Milton, and two justices of the county of Northumberland made an order on the overseers of Milton to that effect. (Here the learned judge cited Sections 4 and 5 of the act of 1836.) In cases of emergency, relief must of course precede the order of maintenance, and the townships would be liable, without an order of maintenance: *McFarland v. Moyamensing*, 12 S. & R. 292, 296. The twenty-third section provides for the poor falling sick: Dunlop, 634.

"The township of B. procured an order to remove a dying pauper who had no settlement there, to C. township. He was ill, and was left on the way, in U. township. The latter township procured an order for his return to B. township.

Held that B. township was bound to receive him and maintain him until properly removed as the statute directs: *Kelly v. Union*, 5 W. & S. 535.

"The return of the sessions shows us that the overseers of Milton, instead of proceeding, as the law directs, to have the unfortunate woman removed to her last legal place of settlement, on August 20, 1845, wrote their first puerile letter to the overseers of Williamsport, informing them that they had raised an order of relief for the pauper from the justices of the peace of Northumberland county, and requesting to know what the overseers of Williamsport wished done with her. On August 29 they again wrote, inclosing a copy of the affidavit of the husband, and desired the overseers of Williamsport to make provision to have her and her child removed, alleging they can establish a settlement for her in Williamsport, remarking that unless the overseers of Williamsport take charge of them and pay for them, the overseers of Northumberland would be under the necessity of proceeding as the law provides in the case. The overseers of Williamsport took no notice of these letters. We next hear of her on November 18, 1845, in New Berlin. The overseers of that place wrote to the overseers of Williamsport that a colored woman, apparently of unsound mind, was wandering in their streets without any means of support, and had become a township charge, so that they had to pay fifty cents a day for her keeping. Shortly after this she is found wandering in the streets of Williamsport. The day after she appeared there she was removed to Milton by order of two justices, who adjudged Milton as her last place of settlement. From this order Milton appeals—and certainly, that her last place of settlement is in Chester county, Milton was not ignorant of, for they had sent a copy of the husband's deposition to Williamsport.

"When the overseers of Milton received the order of relief from the two justices of Northumberland county, it was their duty to have provided for the pauper until they found, in a

legal manner, her last place of settlement. Instead of regarding the act of assembly, or the dictates of humanity, they permit this unfortunate deranged woman, in an inclement season of the year (to use the most delicate expression) to wander from the borough of Milton. They not only neglected their duty as officers, but as men. When they found her last place of settlement our law, in its wisdom, would have made them full remuneration for any money judiciously expended for the pauper, and for their trouble. But instead of taking proper care of the unfortunate maniac, and providing for her wants, they shuffle her off to the protection of Him who tempers the wind to the shorn lamb. Overseers of the poor, like all other officers, are not above the law. It is sometimes necessary to teach them their duty. . . . Under any direction, where an order for relief or maintenance is issued, the township on whom it is made is bound to support the pauper until they find the place of his last settlement. From such an order there is no appeal: 2 Yeates, 164; 2 Watts, 434. The oversers who receive such order are bound to obey it. The pauper was legally sent by the two justices to the borough of Milton. It was the duty of that borough to provide for her food and clothing until they found her last place of legal settlement. The overseers of Milton did not provide for her, and the order of the sessions only restores her to their care and custody. They ought not to be allowed to take advantage of their illegal conduct. The sessions only restored her to the place she rightfully belonged, and if the overseers of the poor have lost their remedy in the county of Chester, as their counsel contends (on which I intimate no opinion), it is their own fault in not doing their duty and pursuing the course pointed out by the act of the legislature. If the loss should turn out to be a severe one, it will teach each the exercise of humanity and charity and reverence of law. Decree of sessions was affirmed.”¹

¹ *Milton v. Williamsport*, 9 Pa. 46.

Implied Assumpsit is Grounded Entirely Upon the Legal Duty.

In an action of assumpsit, by the overseers of Nippenose, to recover from the overseers of Jersey Shore a sum of money expended by the plaintiffs in keeping a colored female pauper, and for medical attendance, funeral expenses, etc. As the suit was founded on no express promise, it was necessary to consider whether the law would imply a promise from the circumstances of the case.

The pauper was an illegitimate girl, born in Lewistown, Mifflin county, Pennsylvania. At about six years of age she was brought to Nippenose township, Lycoming county, where her mother married William Clark. Clark and wife lived together several years in Nippenose, but seemed never to have gained a settlement there, when they separated, and the pauper went to live with her aunt, in Nippenose, going out occasionally to service. About July 1, 1861, she went from her aunt's to reside with a Mrs. Strickler, of Jersey Shore, as a house servant, and soon after entering this service she was badly burnt by the explosion of a camphene lamp, and at her own request was immediately taken back to her aunt in Nippenose. On July 9, 1861, an order of relief was obtained from two justices of Jersey Shore directed to the overseers of Nippenose, requiring them to take charge of the pauper, and provide for her wants, which was done until March 9, 1862, when she died. The bill of expenses incurred by the overseers of Nippenose on behalf of the pauper was ascertained to be \$262.84, and it was for this sum the action was brought.

Woodward, C. J., *inter alia*, said: "In the first place, it appears to us very clear that the pauper's only legal settlement was in Lewistown, where she was born. The eleventh section of the act of June 13, 1836, declares that every illegitimate child shall be deemed to be settled in the place where the mother was legally settled at the time of the birth of such child. Though the child may acquire a settlement of her own subsequently, and perhaps may derive from her mother

a subsequent settlement acquired by her, yet it is unquestionable that neither mother nor child in this instance ever acquired a settlement either in Nippenose or Jersey Shore. The district, therefore, which was liable for the pauper's support, under the twenty-third section of the act of 1836, and to which she might have been removed, was Lewistown.

"In the next place, it was plainly the duty of the overseers of Nippenose, after the order of relief was issued, to furnish the relief required. The fifth section of the act is express to this point. Under that section it was immaterial that the pauper's settlement was in Lewistown, or that her hurt was received in Jersey Shore, for she was a 'poor person within the district,' and simply by virtue of that fact, was entitled to relief from Nippenose. Under the sixth section the order of two magistrates of the county was necessary to authorize the overseers of Nippenose to enter her upon their books, and administer the requisite relief, and this they had. The fact that the two magistrates belonged to Jersey Shore is an immaterial circumstance, for any two magistrates of the county were competent to issue the order, and it was properly directed to the overseers of the district within which the sufferer was lying. The provisions of our poor law are most humane, for they secure efficient relief at the point where, on sudden sickness or dangerous hurt, it is needed, without admitting disputes about settlements, removals and ultimate responsibilities. And to give them the utmost effect we could, we held that the order of relief which the statute requires may come after as well as before the relief is administered: *Murray's Case*, 32 Pa. 182; *Worthington's Case*, 38 Pa. 163; *Directors v. Wallace*, 8 W. & S. 94.

"Thirdly, Jersey Shore was under no legal liability to provide for the pauper, because, first, though she got her hurt there, she could be removed and was removed from that district, and therefore the case, as to Jersey Shore, did not fall within the twenty-third section of the act; second, because no application for relief was made to the overseers of Jersey

Shore by or on behalf of the pauper, as required by the fifth section; third, because no order of relief has ever been issued to the overseers of Jersey Shore; and, finally, because no order of removal to Jersey Shore could be made, the pauper having no settlement there. . . . It is not the mere fact of falling sick, or receiving an injury in the district where the pauper has no legal settlement, that makes the district liable, but it is the fact of sickness, injury or death, 'so that he cannot be removed.' *Kelly Twp. v. Union Twp.*, 5 W. & S. 535. If a pauper can be removed, the statute contemplates legal measures for his removal to his last place of legal settlement, and if so removed, or if removed by his own will, or by the interposition of friends, and no application be made to the overseers of the district where the sickness or accident happens, then, whatever may be the demands of humanity, there cannot be said to exist any legal liability on the part of that district. The case of the Overseers of Versailles *v. The Overseers of Mifflin*, 10 Watts, 360, is supposed to be an authority against this ruling, but that was the case of a pauper who had no settlement within the state, and was ruled on the authority of *McCay's Case*, 2 Pa. 435, which was also the case of a pauper without a settlement in the state. 'If he had no settlement,' said Judge Huston, 'no recovery can be had, and the expense of maintenance remains on the township in which such pauper was when he required relief.' . . .

"As to the construction of the words of the statute, 'so that he cannot be removed,' it may be that their primary reference was to the provision for a legal removal by order of two magistrates, but we do not think they should be limited to this meaning. If a pauper be carried from the township or district in which he is hurt, before any application for relief is made, and that removal be voluntary on his part, and be made in good faith for his comfort and convenience, and not to evade a liability for his support—in a word, if it be made at the instance and for the benefit of the pauper—then we say, his case does not fall within the twenty-third section,

for he is not one that 'cannot be removed.' The fact of his removal is the best evidence of his capability to be removed. The cases wherein the district in which the pauper got hurt has been holden for his support, have treated the pauper as having a *quasi* settlement therein, because there was no actual settlement elsewhere in Pennsylvania; but the traveler or sojourner who has a legal settlement in the state is not within the reason of the rule. If removed by two magistrates to his place of legal settlement, or if taken out of the district, without application for relief, by his own request, and for his benefit, no *quasi* settlement can be predicated of him in the district where sickness or accident befell him, and, until returned to his place of settlement, he is to be relieved according to the fifth section, rather than the twenty-third section of the act.

"It thus appears very clear to us that Nippenose was bound to administer the necessary relief in this instance, and to seek compensation therefor from Lewistown, and not from Jersey Shore." ²

In another case where "Mary Jane Hare, a weak-minded girl, was born in Howard township, Centre county, where her parents resided, but, for some three years before her death, lived, 'off and on,' with her cousin, Mrs. Clarissa Davis, in Spring township, Mrs. Davis said, 'She made my house her home when she had no other place to live at; she worked out occasionally for various persons;' and Mrs. Davis applied to her uncle, John Leathers, to do something for her or to place her on the town as a public charge. Her last place of service was at Mathew Andrews's, in Marion township, where she was hired at seventy-five cents a week, but after being there about two weeks, got sick and was taken to Bellefonte, and from there walked to her cousin's, Mrs. Davis, a short distance below the town. Next day she returned to Andrews's, and on May 16, 1863, was again taken from there

² *Nippenose v. Jersey Shore*, 48 Pa. 406.

and left at Mrs. Davis's, where she died. Her bill for nursing and medical attendance in her last sickness and for funeral expenses amounted to \$200.37, which the court ordered Marion township to pay to Spring township."

Woodward, J.: "It does not appear that the pauper ever gained a legal settlement, either in Spring or Marion township, and of course her only legal settlement was that which she derived from her parents in Howard township. Nor was she ever made chargeable upon either Spring or Marion townships under the fifth and sixth sections of the act, nor was any order of relief or of removal issued to the overseers of either of said townships. It is alleged in the petition of complaint that she was removed from the house of Andrews at the request and under the direction of one of the overseers of Marion, but it appears from the testimony of the man who removed her, that it was not an official act of the overseer, but rather neighborly advice, and that he would have removed her without any instructions from the overseer.

"The twenty-third section contemplates the case of a pauper having a legal settlement within the state, coming out of any city or district of the state into another district of the state, and falling sick and dying in said district, 'so that he cannot be removed.' In such a case it is the duty of the overseers of the district where the pauper falls sick or dies, to give notice to the overseers of the district where the last legal settlement was gained, of the name, circumstances, and condition of the pauper, and if the overseers of the district where the last legal settlement was gained neglect to provide for the maintenance, and in case of death, for the burial of the pauper, these duties are to be performed at their expense, and the court of quarter sessions will, upon application, enforce the payment of the necessary charges.

"In the case of *Nippenose v. Jersey Shore*, 12 Wr. 402, we held that the words 'so that he cannot be removed,' as qualifying both members of the sentence, as well that which relates to sickness as that which relates to death. If the

pauper dies he cannot of course be removed, except for the purpose of burial, but if he fall sick, he may or may not be removable, according to the nature and degree of his malady. If he cannot be removed without endangering his life, or without spreading a contagious disease, every dictate of humanity forbids it, and whoever attempts it should be punished. The removal contemplated by the statute is a voluntary one, such as the pauper under proper advice may desire, or a legal one, by order of two justices, when due regard to his condition would become an official duty. To shuffle off a sick pauper without his consent and without official authority merely to escape the plainest of all Christian duties, is a fraud and wrong, which in some form must be punishable. But would even such an outrage subject the *township* in which it was perpetrated to the remedial provisions of the twenty-third section? Would Marion be liable to Spring township for the inhumanity of the citizens of Marion? The only *corporate* liability which the section charges is against the district of the last legal settlement and it is in behalf of the district where the sickness occurs. How can it be applied *against* the district of the original sickness and in behalf of a district which is charged with no duty in respect to the pauper? That was the application made of it in this instance, and we think it was unwarranted.

“Had Mrs. Davis or the overseers of Spring treated the pauper as falling sick in their hands—so sick as not to be removable—and proceeded against Howard, there would have been no difficulty in sustaining the proceeding, but as there was no pretence of a legal settlement in Marion, there was no authority to proceed under this section against Marion. This ruling is consistent with the above-cited case of *Nippenose v. Jersey Shore*, 48 Pa. 406. . . . But the evidence does not prove any improper motives in the removal. There were two sick persons at the time in Mr. Andrews’s family, and this girl, in whom no symptoms of small-pox had yet developed themselves, was more likely to get necessary attention

at her kinswoman's house, where she had made her home for three years, than in a sick family of strangers. Mrs. Davis and the friends in Bellefonte, who provided for her wants, performed a humane charity, and ought to be indemnified for their pecuniary outlay by Howard township, but as Spring township has no legal claim on Marion, the decree must be reversed." *

"In an action of assumpsit, against a county, for services as a physician rendered to a pauper, the evidence was, that on a night in December, 1867, the pauper, who was a single man, was badly frozen about three miles from West Chester, the residence of the plaintiff, and about nine miles from the poor house of the county. He was in so dangerous a condition that it would have been unsafe to take him to the poor house. He was brought to West Chester, where he was attended to by the plaintiff until July, 1868.

"A justice of the peace, on June 9, 1868, on information of the plaintiff, issued an order declaring Smith a pauper.

"The plaintiff did not know that Smith was a pauper. There was no question made by the defendant as to Smith being a pauper, and as to the case being one of emergency.

"The principal ground of defence, and that especially urged in the supreme court, was that the directors had made certain rules under an act of assembly relating to Chester county, which prevented the plaintiff from recovering. The act was passed February 27, 1798 (3 Sm. L. 309).

"In pursuance of this act the directors established these 'rules and regulations in reference to outdoor paupers:'

"'1. All relief rendered hereafter to paupers, whether for medical attendance or otherwise, must be furnished at the almshouse, unless in cases of extreme emergency, when delays would peril life, or expose the pauper to serious injury, were he to be removed, and except also in such cases as in

* Marion Township v. Spring Township, 50 Pa. 308.

accordance with the act of assembly, the directors may deem it proper and convenient to authorize that the pauper be maintained elsewhere.

“‘2. Except in cases of emergency, as mentioned in the first regulation, no payment will be made for medical attendance or other relief outside of the almshouse, unless the same shall have been permitted by special order of the directors before it is rendered.

“‘3. No payments will be made by the directors for medical attendance or other relief furnished, unless the person claiming pay shall appear before a justice of the peace and have the poor person duly constituted a pauper, by and with the consent of such person, and the person claiming pay shall also notify said justice of the earliest occasion it is suitable to remove said person to the almshouse, whereupon said justice shall issue his warrant to the constable and have the removal made.

“‘4. The person claiming pay as above must also duly notify one of the directors of the circumstances of the case within three weeks after the first services shall be rendered to the pauper.’

“In June, 1867, these rules were approved by the court according to the provisions of the ninth section of the act of assembly of February 27, 1798, relating to the support of the poor in the counties of Chester and Lancaster.

“It was admitted by the plaintiff that he had received notice of these rules before his attendance on Smith.

“The defendants submitted these points:

“1. The directors of the poor of Chester County had power to make the rules and regulations in evidence in this case, and said rules and regulations having been approved by the judges of the court of common pleas, are binding on the plaintiff.

“2. The plaintiff having failed to comply with said rules and regulations, cannot recover for the alleged services to the pauper claimed in this case.

"3. The plaintiff cannot in any event recover for more than three weeks' services.

"4. The court of common pleas has not jurisdiction in this case."

The court denied the defendant's points, and this was assigned for error. The supreme court, Sharswood, J., *inter alia*, said: "Upon the question which arises upon the first and second assignments, as to the liability of the defendants below to the plaintiffs, we concur with the learned judge. *Directors v. Worthington*, 38 Pa. 160, is an authority in point. That was a case from Chester county, though the act of February 27, 1798, entitled 'An act to provide for the erection of houses for the employment and support of the poor in the counties of Chester and Lancaster' (3 Sm. 306), does not seem to have been brought to the notice of the court. It was there held that relief may be extended to one entitled to the benefit of the poor laws without an order, in cases of emergency, and the directors are liable to pay for necessary relief furnished by others, provided an order of approval be obtained afterwards. The act of 1798 requires the removal of paupers to the poor house, 'except in cases where by sickness or other sufficient cause any poor person cannot be removed,' and the rules adopted by the directors in pursuance of the act prohibiting outdoor relief, expressly except 'cases of extreme emergency, when delays would peril life or expose the pauper to serious injury.' The rule which declares that any person claiming pay for medical attendance must notify one of the directors of the circumstances of the case within three weeks after the first services shall be rendered to the pauper, has no application, as the learned judge below properly held, to the case of a party who had no knowledge of the patient's circumstances at the time the services were rendered—that he was a pauper with whom the district was chargeable. It would be an unreasonable interpretation of the rule to require a physician, called suddenly to attend a stranger in suffering and danger, to institute an inquiry into

his circumstances and condition in life. No high-minded professional gentleman would ask his patient any question upon such a subject, and in many cases it would be improper to do so. Must the district escape the liability to which it is rightfully subject unless he does? It may be just and wise to require such a notice in the case of a known pauper; but even if the rule were susceptible of the construction contended for by the plaintiffs in error, it may well be questioned whether it would be within the power conferred upon them to make 'such ordinances, rules and regulations as they shall think proper, convenient and necessary for the discretion, government and support of the poor and houses of employment aforesaid, and of revenues thereunto respectively belonging, and all such persons as shall come under their care and cognizance; provided the same be not repugnant to this law (of 1798), or any other of the laws of this state or the United States.' They cannot by such a rule relieve the district from a legal obligation imposed as we have seen by the act, without any such condition or limitation." ⁴

The fourth point will be discussed under the head of "jurisdiction."

"The admitted facts in the case were that while the pauper had a legal settlement in the borough of Clarion, he became a charge on the county of Blair; that he was duly removed to and accepted by the borough of Clarion; that the order of removal was duly served on the overseers of the poor of said borough, and no appeal was taken therefrom. It also appears that a bill of expenses incurred by the county of Blair for relieving and removing the pauper was duly proved and demand for its payment made of the overseers of the poor of said borough, before application made to the quarter sessions to order payment thereof. The borough denied its liability and refused to pay. It will, therefore, be seen the facts are unlike those in *Renovo v. Half-Moon*, 78 Pa. 301.

⁴ *Directors of the Poor v. Malany*, 64 Pa. 144.

There the record did not show any acceptance of the pauper, nor any demand for payment of the expenses incurred. It therefore follows the learned judge erred in discharging the rule to show cause, which had been granted.”⁵

Appeal from Order of Relief and Approval.

“A pauper, D. R. Ritter, was injured in Scott township, and was carried to the house of John Brown, where he remained until his death. After his death Brown applied to two justices and obtained an order approving his expenditures in supporting said Ritter. From this order the poor district appealed to the court of quarter sessions, the court directing the appeal to be filed, but not deciding the question of the right to appeal. That question came up as stated in the opinion of the court.

“Counsel in this case agreed that the only question for argument shall be the question of the right to take an appeal from the order of approval.

“After careful examination of the act of assembly relating to poor matters, the court, Hazen, J., held that from such an order there was no appeal therein provided. The appeal was quashed at the costs of appellant, but without prejudice to the right of appellant in defending against the claim so approved in a suit against appellant to recover the same.”⁶

A case decided somewhat later, in the court of quarter sessions of Armstrong county, seems to be in conflict with the foregoing ruling.

The learned judge held that under the act of 1836, an appeal lies to the court of quarter sessions from an order of approval by two justices of a bill by an undertaker for furnishing the funeral of a poor person.

Rayburn, P. J., *inter alia*, said: “If the plaintiff furnished

⁵ Blair County *v.* Clarion County, 91 Pa. 431.

⁶ Scott Township Poor District's Ap., 9 Pa. C. C. R. 304.

the coffin and performed these services with the knowledge that the deceased had no property of his own, and that he expected his pay for the coffin and services from the township, provided the friends of the deceased would not pay them, we think the township would be liable. Under the circumstances we cannot but hold that this was a case of emergency. It is true that the man was dead, and time could have been taken to have notified the overseers of the poor and called them in, to have buried this man; but under the circumstances the policy of the law will not require a physician or an undertaker when he is called to first inquire whether or not the man to whom the relief is furnished had any property. Had not Neale furnished the coffin and buried this man, or some other one did it, the overseers would have been in duty bound to furnish the coffin and bury him. And as the support and maintenance of the poor, and the burial of them after death, is by law cast upon the poor district, we do not see any reason why an individual under circumstances such as exist in this case should be called upon to bear the whole burden. We think the law is such that it is required to be borne by the poor district, so that each individual citizen residing in that poor district will be called upon to contribute his share of the expenses, and then it would be unfair to permit the burden to rest entirely upon one.”⁷

Funeral Expenses.

“Though most of the provisions of the act of 1836 relate to the poor while alive, yet in several sections have relation to funeral expenses. See Sections 14, 23, which seem to put the funeral expenses on precisely the same footing as maintenance of a pauper while alive; and the thirty-third section gives the overseers the same rights to recover any property belonging to a pauper, and apply it as well to pay the ex-

⁷ *Neale v. Overseers of Plumcreek Township*, 12 Pa. C. C. R. 649.

penses for their funeral and burial as of their maintenance while alive. The first section directs the overseers to provide for every poor person, and the following sections point to the mode in different cases. The fifth section provides for such poor as have no settlement; or, I suppose, such as having a settlement, require immediate relief. The sixth section says: 'No person shall be entered on the poor book of any district, or receive relief from any overseers, before an order shall have been procured from two magistrates of the county for the same; and in case any overseer enter in the poor-book, or relieve such poor person without such order, he shall forfeit a sum equal to the amount or value given, unless such entry or relief shall be approved by two magistrates, as aforesaid;' that is, if his act is approved by the same authority which could have given an order. This was a wise and humane provision for cases of sudden emergency. Now, as funeral expenses are put on the same footing as relief to the living, the subsequent approval will have the same effect as to them as to relief given; and if the deceased left any property, the overseers have the same right to indemnify themselves out of it. The forty-second section subjects the overseers to indictment if they neglect to perform any duty prescribed by the Act." ⁸

Act June 13, 1883, P. L. 119.

This act makes some changes in reference to the burial of paupers. It is entitled an

"Act for the promotion of medical science by the distribution and use of unclaimed human bodies for scientific purposes through a board created for that purpose and to prevent unauthorized uses and traffic in human bodies."

I cite only those sections applicable to our work.

⁸ *Directors v. Wallace*, 8 W. & S. 95.

Board for Distribution of Dead Human Bodies. P. & L. Dig. 2278, § 2.

Section 2. All public officers, agents and servants, and all officers, agents and servants of any and every county, city, district and other municipality, and of any and every almshouse, prison, morgue, hospital or other public institution having charge or control over dead human bodies, required to be buried at public expense, are hereby required to notify the said board of distribution or such person or persons as may, from time to time, be designated by said board or its duly authorized officer or agent, whenever such body or bodies come to his or her possession, charge or control, and shall, without fee or reward, deliver such body or bodies, and permit and suffer the said board and its agents, and the physicians and surgeons from time to time designated by them, who may comply with the provisions of this act, to take and remove all such bodies to be used within this state for the advancement of medical science, but no such notice need be given nor shall any such body be delivered if any person claiming to be and satisfying the authorities in charge of said body that he or she is of kindred or is related by marriage to the deceased, shall claim the said body for burial, but it shall be surrendered for interment, nor shall the notice be given or body delivered if such deceased person was a traveler who died suddenly, in which case the said body shall be buried.

Penalty for Neglect of Duty. P. & L. Dig. 2280, § 7.

Section 7. That any person having duties enjoined upon him by the provisions of this act who shall neglect, refuse or omit to perform the same as hereby required, shall on conviction thereof, be liable to fine of not less than one hundred nor more than five hundred dollars for each offence.

This law is rather gruesome and revolting to the finer feelings of humanity, and was at first looked upon with great disfavor, even by the officials whose duty it is to deliver such bodies, but the horror has somewhat worn off, and many of the bodies are now claimed by kindred, who would otherwise have allowed the poor authorities to bury them in Pottery-field.

Maintenance of Paupers Having no Legal Settlement in the State.

Where a poor person, having no legal settlement in the state is injured, the cost of his maintenance must be paid by the township where he becomes helpless.⁹

Liability for Relief Furnished in Another State.

John Williams, a minor, who resided with his father in Greenville, Mercer county, Pa., was injured in a railroad accident in Williams county, Ohio, in 1892, which rendered the amputation of one arm at the shoulder necessary. He was cared for, after an order of relief in Ohio, by the plaintiffs, "The Infirmary Directors of Williams county, Ohio," at an expense of \$125. The young man's father had a legal settlement in defendant's district (Mercer county), at the time of the accident, and for five years prior thereto, and while neither had ever been adjudged to be paupers, yet neither had any property out of which the bill of maintenance could have been collected.

Plaintiff took out no order of relief, or order of approval in Pennsylvania, but presented a probated claim to defendants.

The plaintiff's claim was for services rendered, in a case of emergency, to one John Williams, whose place of settlement at the time was in the poor district of defendant. The services sued for were rendered in the state of Ohio. Is defendant liable?

"The defendant is a *quasi* municipal corporation created for certain purposes. Its duties and liabilities are not of common-law origin, but are such as are within the scope and meaning of its charter. They are not fully defined by the act, by which defendant corporation was created, but are found in the general laws of the state relating to the poor and to poor districts.

⁹ Taylor v. Shenango, 18 W. N. C. 471.

"It is the duty of the directors of every poor district, from time to time, to provide, as by law directed, for every poor person within the district having a settlement therein, who shall apply to them for relief.

"It is likewise the duty of such directors to furnish relief for every poor person within the district, not having a settlement therein, who shall apply to them for relief, until such person can be removed to the place of his settlement: Act of 1836, Sections 1 and 5.

"Under this law it has been determined that one who, in a poor district of this commonwealth, takes care of an actual pauper, in a case of emergency, is entitled to recovery for the services from the poor district bound by law to care for such pauper, provided that before bringing suit he obtain an order of relief: *Overseers v. McCoy*, 2 P. & W. 432; *Directors v. Wallace*, 8 W. & S. 94; *Roxborough v. Bunn*, 12 S. & R. 292; *Franklin Twp. v. Hospital*, 30 Pa. 522; *Directors v. Murry*, 32 Pa. 182; *Directors v. Worthington*, 38 Pa. 160; *Directors v. Malany*, 62 Pa. 144.

"It is to be noticed that the gist of such a plaintiff's right to recover is, that the poor district sued be under a legal duty to care for the pauper. Such duty, we have seen, arises only from express enactment. A superficial reading of the cases cited might suggest that they indicate a general duty resting upon each poor district to make compensation for necessary care given cases of emergency to a pauper settled in such poor district, regardless of the place where the services were rendered. But a more careful study will show that they recognize such duty only when the services were rendered within some poor district of this commonwealth. Those cases give a liberal and humane construction to our poor laws; but they do not recognize any duty to care for paupers which those laws do not expressly or by fair inference impose. Those duties are limited to caring for actual paupers within the district, whether their settlement is there or not; and to taking the burden off another district of the commonwealth

of caring for a pauper whose settlement is in the district upon which the claim is made, and to making compensation to such district or individual in it, for care rendered to such pauper in case of emergency: Act of 1836, Sections 1, 5 and 23. . . . There is no provision made for paupers not within this state, even though their legal settlement may be here. Hence the plaintiff is not entitled to recover." ¹⁰

Relief Must be Furnished Until Pauper Can be Removed.

Williams, J., said: "The proper place of Lorain Murphy's legal settlement was that of her husband's, which appeared by the evidence to be the city of Scranton. He had left that city in search of work, and resided temporarily wherever he could find it. In August, 1892, he was in the township of Troxen, Wyoming county. In September of the same year he went with his wife to Tunkhannock township. He removed to the borough of Tunkhannock in November, and near the end of December went to the borough of Montrose. For a few weeks he was without work, and during this time his wife appealed to the overseers of the poor for assistance.

"An order of relief was issued in consequence of her application, requiring the overseers to provide for the family 'until the said Murphy can secure work or be removed.' Murphy obtained work soon after, and no further aid from the overseers was thereafter asked or given. About the first of May following Mrs. Murphy, who was in an advanced stage of pregnancy, returned to the house of a relative in the borough of Tunkhannock to be confined. On the sixth day of the same month an order for her relief was issued to the overseers of said borough. This was followed a week later by the order of removal now before us. Nothing appears to have been done by the overseers except to serve notice

¹⁰ Williams v. Mercer County, 15 Pa. C. C. R. 525.

of the order of removal upon the officers of the defendant borough. Upon the trial in the court of quarter sessions of Wyoming county, the order of removal was sustained, and the poor district of Montrose appealed.

"It is admitted that neither Murphy nor his wife was in fact a public charge or in receipt of relief from Montrose poor district when Mrs. Murphy went to Tunkhannock borough for her confinement. She clearly had no legal settlement there. She had no *quasi* settlement. Her husband was there temporarily, and was bound to provide for her. That was her home, her actual domicile. Being found sick and in want in another district, the duty of the overseer of such district was to provide for her until she could be taken to her husband's house, as the statute forbids the separation of husband and wife by the overseers of the poor. As a matter of fact, the officers of Tunkhannock poor district did not remove Mrs. Murphy. She returned to Montrose when able, at her own instance, and at her own cost. For what, then, is the borough of Montrose liable to the plaintiff? It is not for any relief that may have been furnished, for no evidence of relief is before us. But if furnished, the husband or the place of legal settlement must be looked to for payment. It is not liable for the expenses of her removal, for she was not in fact removed, having returned, as soon as she was able, to her husband's house.

"The order of removal having regularly issued, it was right that it should be served upon the defendant, and the question properly determined whether the removal was for any reason proper to be made. The order of the court below as it stands amended is a holding that the order was properly issued as a means of returning Mrs. Murphy to her husband's house, and for no other purpose, and for this reason alone he sustained it, notwithstanding the fact that nothing was done under its authority. We are not disposed to disturb this finding, but will further modify the order by striking therefrom the words, 'their reasonable costs and charges on this

behalf expended,' and substituting therefor the following: the defendants to pay the costs of this appeal." ¹¹

The following act provides for the support of sick and injured poor when under treatment in hospitals, in certain cities and boroughs.

Act May 21, 1874, P. L. 220.

An Act to provide for the support out of the county treasury of the sick and injured poor when under treatment in hospitals, in certain cities and boroughs.

Managers of Hospitals May Make Requisitions on Commissioners. P. & L. Dig. 8535, § 108.

Section 1. Be it enacted, etc., That it shall be lawful for the managers or trustees of any hospital for the cure of the sick and injured which is now or may be hereafter established and duly incorporated, in any city or borough of this commonwealth containing a population of not less than twenty thousand inhabitants, to make requisitions quarterly upon the commissioners of the county in which such hospital may be situated, for the support of such poor patients under treatment in such hospitals as are unable to pay for their treatment, for which requisitions the commissioners shall grant orders upon the treasurer of the county, who shall pay the same to the treasurer of such hospital.

Allowance for Support, Etc., Limited. P. & L. Dig. 3535, § 109.

Section 2. That the sum [to] be allowed for the support and treatment of any poor patient shall not exceed one dollar per day, nor shall a greater amount than five thousand dollars be paid out of the county treasury to any such hospital in any one year.

Hospitals Not to be Under Control of Religious Denominations. P. & L. Dig. 3535, § 110.

Section 3. That such hospital shall not be under the control of or owned by any religious sect or denomination, but

¹¹ Tunkhannock Borough v. Montrose Borough, 180 Pa. 582.

shall be open for the reception and treatment of sick or injured citizens of Pennsylvania, without regard to creed, sex or race, and a report of its operations shall be made to the board of public charities of this commonwealth at such times and in such manner as the said board may require.

Section 4. That this act shall not apply to any hospital which has an endowment fund exceeding five thousand dollars per annum or other means of support, except voluntary contributions and pay from patients under treatment, nor to any hospital unless it and the land appurtenant to it are owned in fee simple by the corporation and are free from incumbrance.

Paupers Having no Legal Settlement. P. & L. Dig. 3536, § 112.

Section 5. That when any sick or injured person shall be received in any such hospital, being indigent and unable to pay for his or her proper medical or surgical treatment, and who has no legal settlement in the county in which said hospital is or may be situated, it shall be the duty of the managers or trustees of said hospital to notify the directors or overseers of the poor of the said county, who shall thereupon notify the directors or overseers of the poor of the county or township in which such sick or injured person has a legal settlement, and they shall be liable for all reasonable charges incurred for the care of said patient not exceeding one dollar per day: Provided, That when any such poor person shall be received into any such hospital who has not a legal settlement in the poor district in which such hospital shall be situated, notice that such person is under treatment in such hospital shall be given to the overseers of the poor of the county or district in which such poor person has a legal settlement, within thirty days after he or she shall be received into such hospital, or the said county or district shall not be liable to pay for more than thirty days' treatment in any such hospital; and the overseers of the poor of the district in which such poor person shall have a legal settlement shall have the right to take such person from any such hospital to their own district for treatment and support if they shall see fit.

CHAPTER V.

RELIEF MUST BE ORDERED BY TWO MAGISTRATES.

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Act of 1836. P. & L. Dig. 3532, § 100.

No Person Shall be Entered on Poor Book, Etc.

Section 6. No person shall be entered on the poor book of any district, or receive relief from any overseers, before such person, or some one in his behalf, shall have procured an order from two magistrates of the county for the same, and in case any overseer shall enter in the proper book, or relieve such poor person without such order, he shall forfeit a sum equal to the amount or value given, unless such entry or relief shall be approved of by two magistrates as aforesaid.

Relief Must be Ordered by Two Magistrates.

We have already seen that in cases of emergency relief must precede the order of maintenance, and the township would be liable without such order.¹

By the act of March 4, 1850, P. L. 122, orders of relief may be made by a single justice in the counties of Northampton, Schuylkill and Somerset.

¹ Milton v. Williamsport, 9 Pa. 46.

By act of January 25, 1853, P. L. 12, the foregoing section was entirely repealed as to the cities of Pittsburg and Allegheny, and the guardians and directors of the poor of said cities have full power and authority to extend relief to all poor persons entitled to receive the same, without the intervention of an order from two justices of the peace.

By acts of April 30, 1855, P. L. 380, and March 6, 1860, P. L. 113, no order of relief may be granted in Washington, Greene, Fayette and Bradford counties, until proof is made, to the satisfaction of the justices, by the oaths of two reputable citizens of the proper county, that such person is entitled to the relief prayed; and the names of said citizens are to be set forth in the order granted by the justices.

These two acts should be made general; it would avoid much expense to the public. Owing to a certain class of justices, who seem to think that their office was created simply for their individual benefit, many orders are issued without inquiry into the necessities or merits of the case, the applicant is then handed to a constable, who, without regard to expense, starts to transfer him to the overseers or poor house, and when he arrives at his destination, it frequently appears that he is not a legal or fit subject for public charity, whereas, if the oath of two reputable citizens were requisite to obtain an order of relief, or of approval, all this unnecessary expense would be avoided.

Conclusiveness of Order of Relief.

"In *Cumberland v. Jefferson*, 25 Pa. 463. evidence was given to prove that the pauper was an able-bodied woman, and not chargeable as a pauper. Proof was submitted by the plaintiff of her ability to earn a livelihood. In the opinion of the supreme court, delivered by Woodward, J., as we have seen, he held that the order of relief was conclusive evidence of the chargeableness of the pauper.

"The law submits that question to the adjudication of a tribunal whose decision cannot be reviewed except in cases

where it is shown by a clear preponderance of evidence that it was obtained by fraud. Fraud is not protected by any judgment or decree of any court: *Mitchel v. Kintzer*, 5 Pa. 217; *Bigelow on Estoppel*, 149.

"The legal presumption is in favor of the honesty and fairness of a transaction, unless upon its face the contrary appears.

"In this case, the good faith of the justices who granted the order of relief, as well as that of the overseers of the poor, is attacked by the testimony of Mrs. Burnett, but, unless Justice Biddle, one of the two overseers of the poor, Mrs. Fincel and Aaron Lewis, have testified falsely, Mrs. Burnett did apply for relief, and did appear to need it. It is objected that her statement in regard to her necessities is not evidence. I hold, however, that, taken in consideration with the surrounding circumstances, they are evidence of part of the *res gestæ*; and her acceptance of the relief is also evidence in behalf of the township. No doubt the overseers were anxious to avoid the completion of the settlement of Burnett in Hills Grove township, and were willing his family should become a town charge to that end. But the weight of evidence is, that the family needed assistance, and that it was rendered at the request of Mrs. Burnett, and in accordance with the declaration of the husband that the town 'would have to take care of his family.'

"If there was a conspiracy to defeat the settlement in Hills Grove as alleged, the defendant has failed to establish it by a preponderance of evidence.

"Where a pauper has become actually chargeable to a district he may be immediately removed, although if allowed to remain he would shortly acquire a settlement." . . .

To this decree the borough of Laporte excepted and filed numerous exceptions, which were all overruled by the court below, when a writ of error was taken to the supreme court.

Mr. Justice Gordon delivered the opinion, and, *inter alia*, says: "We are free to say, after careful examination of these

facts, that, in our opinion, the learned judge of the court below has arrived at a correct conclusion. We may, indeed, concede that the question is a close one and not free from doubt, but on the whole, the evidence preponderates in favor of the judgment which he has reached. . . . Under the poor laws a settlement cannot be acquired by leasing alone, there must also be the payment of rent, but this rent need not be paid in money; it may be paid in the equivalent of money, labor or other services. . . . If at the time of the removal the persons constituting the family of Burnett had ceased to be paupers, the order of removal would be inoperative, but if they continued to be a charge, the relief order would be as effective as proof of the inception of that charge as it was on the day of its issue. For this order is after all but the statutory method of indicating the person or persons who are entitled to the public support; the warrant to the overseers for putting the name or names of such person or persons on the poor books. But when in this manner they become the subjects of public relief, they so continue until such relief is no longer necessary. It follows that the order for relief is conclusive only of the fact that at the time of its issue the persons therein named were entitled to maintenance as paupers, but it is only *prima facie* evidence of the continuing necessity for relief. If, therefore, the Burnetts were not paupers at the time of the issuing of the order of removal, the defendant might have proved the fact and so relieved itself of responsibility, but it is obvious that the time intervening between the order for relief and the order for removal has nothing to do with the question of settlement, they only are involved in this case." Judgment affirmed.²

Liability for Medical Services Rendered to Paupers.

"A suit was brought in the common pleas of Erie county to recover for medical and surgical services rendered by

² *Laporte Borough v. Hillsgrove Township*, 95 Pa. 273.

plaintiff to one Mary Sample, a woman about forty years of age, without means, and a resident of Columbus township, Warren county, who was run over by railroad cars at Corry, in Erie county, on October 9, 1880, her legs being so badly crushed as to render immediate amputation necessary, and which operation was performed by the plaintiff, assisted by two other surgeons, Dr. B. E. Phelps, to whose office the woman had been carried, and Dr. C. B. Kibler, who was at the time, and for some years previously had been, employed by the poor directors of Erie county to look after the poor of that vicinity. The claim of the plaintiff included several items of expenditure of money, as for room at the hotel, nurse, medicines, coffin and grave, etc."

Galbraith, P. J.: "It appears from the finding of the legal arbitrator, based upon the testimony of the plaintiff himself, that he, the plaintiff, knew at the time he rendered the surgical services and incurred the outlays, for which he sues, that Dr. Kibler, who was present and assisted at the amputation, was the physician and surgeon employed by the poor directors of Erie county to look after the poor of Corry and vicinity; yet, knowing this fact and that it was Dr. Kibler's duty and business to look to the attendance and medical care of the woman whom the plaintiff knew was a pauper, he not only did not ask Dr. Kibler to take charge of the case, as he ought to have done, but he objected even to his assisting in the necessary operation, and proceeded afterward on his own motion, and without communicating with or consulting Dr. Kibler, although he knew, as before stated, that he was the proper person to do such duty, to procure a nurse and engage a room, and to incur the other expenses referred to. In short, the plaintiff appears to have wholly ignored Dr. Kibler throughout, and to have taken the entire case into his own hands. The legal arbitrator suggests that 'it would have been wiser had the plaintiff turned the case over to Dr. Kibler, and relieved himself of any responsibility'—an opinion in which I fully concur. . . .

"It is not necessary, however, to predicate anything upon this point, there being, as it seems to me, at least two other fatal objections to the plaintiff's claim. The first of these is that the services rendered were not required by any emergency such as will justify the plaintiff in rendering them and recovering for them afterwards; the regularly employed medical attendant of the poor directors being present and ready to act, but the plaintiff taking it upon himself to take charge and assume all direction, although he knew it was not his place to do so. And even if an emergency had existed that would have made the services rendered proper and the expenditures incurred necessary as in the case of *Directors of the Poor v. Worthington*, 38 Pa. 160, without a previous order from two magistrates, it was essential to the right of the plaintiff, in order to maintain a suit, that such order should have been had afterwards." ³

Requisites of Order of Relief.

"It is conceded that an order would be indispensable, but it was contended that this requisite was fully complied with by the paper dated January 12, 1883, signed by two magistrates of the city of Corry. In this I do not agree with the learned legal arbitrator.

"The paper which requires the poor directors to receive a woman upon their poor books as an indigent person and to make suitable provision for her—paying the claim of her physician, if they should find it to be just, is not sufficient."⁴

"So far as the first part of this paper is concerned, it was a mere nullity, as it would only relate to a living person, and the woman had then been dead over two years, and the latter portion is in no sense an order, for it leaves the whole matter of the claim of the plaintiff to the discretion of the poor directors. It cannot be held to be anything more, so far as the matter here in controversy is concerned, than a mere re-

³ *Pickett v. Erie County Poor District*, 3 Pa. C. C. R. 541. ⁴ *Ib.*

quest to them to examine the claim, and to pay it if they thought it just. It is not mere hyper-criticism to say that this is in no sense an order such as the law requires. In case of emergency, relief may be furnished, and the proper order need not be obtained until afterwards, as already said, but this does not render the need of the subsequent order any the less imperative. Nor is it a proper view of the law to assume that mere notice is the purpose of this provision, as argued by the legal arbitrator. There must be a command from two magistrates before there is a legal liability fixed upon the directors, and not a mere notice that such a claim exists, coupled with a request or a conditional order, and not naming any sum or amount, as is the case here.

"It is true, as said by the arbitrator, that the law does not require a strict adherence to form, much less to technical accuracy, in such papers, but the difficulty here is that the substance of what is required is absent. If the order were contained in the paper requiring the directors to pay the claim of the plaintiff, it would not matter how inartificially it was drawn, but there is no order, and no forced construction of language can make it out of the words used.

"If the plaintiff could not get the necessary order, his remedy was by an appeal to the court of quarter sessions. He did not adopt this course, but chose to accept what does not amount to the required order intended by the law, and there is no way but to hold that no liability of the poor directors was thereby fixed, and that hence this action must fail. Judgment was entered in favor of defendants." ⁵

"We come now to examine the order of relief issued by two justices of the peace, which the respondents say is defective and illegal, and therefore gives the petitioners no claim for compensation for services or expenses. Whether this was a case of emergency or not does not clearly appear; and if it was not, the respondents have the right to insist that

⁵ *Pickett v. Erie County Poor District*, 3 Pa. C. C. R. 541.

there should have been a previous order of relief, or at least a subsequent order of approval. The pauper, Mrs. Sweitzer, left Zerbe township in June, 1884, and went to her parents in Delaware township. The next we hear of her is on February 5, 1886. On that day, the so-called order of relief states, in substance, that the complaint has been made to two justices by Elizabeth Miller, the mother of the pauper, and that the pauper is and has been in bad health for some time, and that the complainant's husband is now a township charge, and she is not being able from the money she receives to keep him, much less the medicine absolutely necessary for her said daughter, Mrs. Sweitzer. She only asks for temporary assistance to obtain medicine for her, as she, complainant, is not able to provide the same. All this is recited in the supposed order of relief. It then goes on to say: "These are therefore to authorize and require you (the overseers), if you find the case as here stated, to see that said Susan Miller (Sweitzer) is provided with suitable medicine, the said township being her legal settlement. Given under our hands and seals at Watsontown and Dewart aforesaid, the fifth day of February, 1886." The usual form of orders of relief states the situation of the pauper, cause of illness, if known, etc., and concludes as follows: "These are, therefore, to authorize and require you to receive the said ——— into your care, and make suitable provision for her until she can be removed,' or as the case may be: Graydon, 357. It is contended in the present case that there is no finding of facts that the party is indigent or in want or entitled to relief. Counsel cited Chitty's edition of Burn's Justice, Vol. IV, page 80, where the order was quashed because it was not positive, no adjudication, etc. I admit that the order in the present case is informal and, perhaps, defective, but in several cases the supreme court has said from Judge Gibson to the present time, that they are not disposed to criticise the forms of orders in poor cases, all matters done under them being entirely proper. I am not disposed, however, to go any

further than the order itself. On its face it does not show, nor is there any evidence in the case to show that the pauper or any one in her behalf ever applied for relief otherwise than 'for temporary assistance to obtain medicine,' and the order of the justices is that 'if they (the overseers) find the case as stated, to see that the said Susan Miller (Sweitzer) is provided with suitable medicine.' . . .

"The petition and answer show that, at the time they were filed, there had been an order of removal by Delaware township against Zerbe township, from which there was an appeal to the court of quarter sessions pending, but it was admitted at the argument the said order of removal was quashed by the court." ⁶

We here insert an act passed May 13, 1879, P. L. 59, which was at one time supposed by some to supersede the sixth section of the act of 1836, but a criticism by Judge Rockafeller, in *Delaware Township v. Zerbe Township*, 3 Pa. C. C. R. 643, with which we follow the act, has, in our opinion, completely disposed of the question.

Act May 13, 1879, P. L. 59. P. & L. Dig. 3527, § 85.

An Act providing for the more speedy relief of poor and indigent persons in poor districts where directors of the poor are appointed by the courts of quarter sessions.

Section 1. Be it enacted, etc., That from and after the passage of this act, any overseer or poor director of any poor district, who is or shall be appointed by the court of quarter sessions according to law, in any of the counties of this commonwealth, may, at his discretion and without order or certificate from a justice of the peace or alderman, enter upon the poor book, grant relief to or admit to the poor house of his proper district, any poor or indigent person or persons, entitled by the laws of this commonwealth to such aid or relief, and in no case shall such order be required or fees allowed

⁶ *Delaware Township v. Zerbe Township*, 3 Pa. C. C. R. 643.

to any justice or justices, alderman or aldermen therefor, and all acts or parts of acts inconsistent herewith are hereby repealed.

Section 6, Act of 1836 Not Repealed.

Rockafeller, J.: "The settlement of a husband in a poor district becomes the settlement of his wife, although she left him before he had gained a settlement and commenced proceedings in divorce on the grounds of cruel and barbarous treatment, when the husband had gained a settlement before the decree of divorce was entered.

"An order of relief, which recited the complaint had been made by the mother of the pauper, alleging that the pauper had been in bad health for some time, that the complainant's husband was a township charge, and that the complainant was not able to provide medicine for the pauper, and which authorized and required the overseers if they found the case as stated, to see that the pauper was provided with suitable medicine, is sufficient under section 6 of the act of 1836, to charge the district of settlement with the expenses of order of relief, medicine and medical attendance, but not with the expenses of general relief, order of removal, counsel fee, etc.

"The act of June 13, 1836, section 6, is not repealed, in Northumberland county, by the act of May 13, 1879, which provides for relief, without an order, in poor districts where directors of the poor are appointed by the court of quarter sessions." ⁷

Criticism on Act May 13, 1879, P. L. 59.

"It is contended by counsel for Delaware township that the said sixth section of the act of 1836 is repealed by the act of May 13, 1879, P. L. 59, an important and salutary law, and if

⁷ Delaware Township v. Zerbe Township, 3 Pa. C. C. R. 643.

it is repealed, it is a great mistake. I scarcely think it is so, but if it is, then an order of relief was unnecessary. The act of 1879 is as follows:"

The learned judge here recites the act, and proceeds: "I am of opinion that the framer of this act had in view some district or districts in the state wherein, under some special law or laws, directors of the poor are appointed by the courts of quarter sessions, or he may have been some layman who did not know that, by the general laws of the state, all overseers of the poor are elected by the people: Act of February 28, 1835, and act of June 27, 1881, as amended by act of June 4, 1883. I know of no law that authorizes, in any case, the appointment of overseers of the poor by the court of quarter sessions, except the act of April 15, 1834, which authorizes said courts to fill vacancies when they occur in township offices until the next annual election. In order to construe the act of 1879, as a repeal of the act of June 13, 1836, we must strike out the title and also the words in the body of the act 'appointed by the court of quarter sessions,' and make it read 'elected,' or strike out the words 'who is or shall be appointed by the court of quarter sessions according to law.' For the present I prefer to take it as it reads, and allow it to apply to any district in the state, if there are any, where overseers of the poor are appointed by the court of quarter sessions, and hold that it does not apply to districts where overseers are elected. My attention was called to the fact that Mr. Brightly, in his last edition of Purdon's Digest, omitted said sixth section of the act of June 13, 1836, and supplied by inserting the act of May 13, 1879, which, of course, is evidence that he thought the former act was repealed by the latter. The latter act, if it applies to districts where overseers are elected, certainly repeals the former, for its provisions are inconsistent.

"For the purpose of this case I shall consider the act of June 13, 1836, unrepealed, and that a township cannot be made chargeable with the expenses of maintaining a pauper

otherwise than by the previous order of two justices of the peace. Of course, relief may be extended without an order in cases of emergency, but there must in all cases be at least a subsequent order of approval: *Overseers v. Baker's Excrs.*, 2 Watts, 280, and many other cases." ⁸

⁸ *Delaware Township v. Zerbe Township*, 3 Pa. C. C. R. 643.

CHAPTER VI.

MISCELLANEOUS DUTIES OF OVERSEERS AND DIRECTORS.

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Overseers May Contract for Maintaining Paupers, Etc.

Act of 1836, Section 7. It shall be lawful for the overseers of every district to contract with any person for a house or lodging for keeping, maintaining and employing such poor persons of the district as shall be adjudged proper objects of relief, and there to keep, maintain and employ such poor persons, and to receive the benefit of their work and labor, for and towards their maintenance and support, and if any poor person shall refuse to be kept and employed in such house, he shall not be entitled to receive relief from the overseers during such refusal.

By act of April 15, 1845, section 20, P. L. 470, the overseers of York county are forbidden to sell any provisions of their own raising to the almshouse and hospital of said county under penalty of \$100. And see following act.

Act May 15, 1874, P. L. 180.

An Act defining the duties of directors of the poor where such office exists in the several counties of this commonwealth.

Directors Shall Not be Interested in Contracts for Supplies.
P. & L. Dig. 3527, § 84.

Section 1. Be it enacted, etc., That it shall not be lawful for any director of the poor, in any county of this commonwealth where said office exists, to be concerned or personally interested in any contract for furnishing supplies for the maintenance or improvement of property under their control. Any violation of the provisions of this act shall be deemed a misdemeanor in office, and upon conviction thereof, the party or parties so offending shall be fined in a sum not exceeding five hundred dollars, and shall be adjudged by the court to be removed from office: Provided, That nothing herein contained shall be construed to prevent such director of the poor from receiving his lawful compensation while necessarily attending in his official character to any of the duties enjoined upon him by his office.

Act June 30, 1885, P. L. 203.

An Act to amend the seventh section of an act, relating to the support and employment of the poor, approved the thirteenth day of June, Anno Domini one thousand eight hundred and thirty-six, authorizing the overseers of the poor of any district to purchase or lease real estate.

Relative to Purchase of Real Estate by Directors. P. & L. Dig. 3532, § 101.

Section 1. Be it enacted, etc., That the seventh section of an act, entitled "An act relating to the support and employment of the poor," approved the thirteenth day of June, Anno Domini one thousand eight hundred and thirty-six, which reads as follows:

"It shall be lawful for the overseers of every district to contract with any person for a house or lodging for keeping, maintaining and employing such poor persons of the district as shall be adjudged proper objects of relief, and there to keep, maintain and employ such poor persons, and to receive the benefit of their work and labor, for and towards their maintenance and support; and, if any poor person shall refuse to be kept and employed in such house, he shall not be entitled to receive relief from the overseers during such refusal," shall be amended and read as follows:

It shall be lawful for the overseers of every district to contract with any person for a house or lodging for keeping, maintaining and employing such poor persons of the district, as shall be adjudged proper objects of relief, and there to keep, maintain and employ such poor persons; and, with the approbation of the court of quarter sessions of the proper county, for the same purpose to purchase suitable real estate in fee or for a term of years, and to improve the same, and to receive the benefit of their work and labor, for and towards their maintenance and support; and, if any person shall refuse to be kept and employed in such house, or upon such real estate, he shall not be allowed to receive relief from the overseers during such refusal.

CHAPTER VII.

MAY PUT OUT APPRENTICES.

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Act of 1836. P. & L. Dig. 3532, § 102.

May Put Out Apprentices.

Section 8. It shall be lawful for the overseers of every district, with the approbation and consent of two or more magistrates of the same county, to put out as apprentices all poor children whose parents are dead, or by the said magistrates found to be unable to maintain them, so as that the time or term of years of such apprenticeship, if a male, do expire at or before the age of twenty-one years, and if a female, at or before the age of eighteen years.

The assent of the parent is not necessary; nor that the infant should join in the indenture.¹

If there be grandparents, however, who are of sufficient ability to maintain the children, a binding by the overseers is void.² The reason for the action of the overseers being void in such case, is based on the twenty-eighth section of

¹ Commonwealth v. Jones, 3 S. & R. 158.

² Ex parte Whiting, 3 Pitts. 129.

this act, which provides that where the grandparents are of sufficient ability, it is their duty to support them.³

An infant-bound apprentice (under act of September 29, 1790), "with the assent of his parent, guardian, or next friend, *or*, with the assent of the overseers of the poor, and approbation of any two justices, etc., shall be as valid as if the infant had been at full age at the time of making the indenture." Now it cannot be understood that by virtue of this law every infant may be bound apprentice by the overseers of the poor and two justices, although the *words* will bear that meaning. But the true meaning is, that the assent of the parent or guardian must be had, except in cases where the infant becomes a charge on the county.⁴

The managers of the almshouse have no power to bind a child, who has no legal settlement within their jurisdiction.⁵ Nor can such binding be made except by the joint action of two justices; it is a judicial act.⁶ The guardians of the poor, under act of March 5, 1828, P. L. 162, have power to bind out a child, who has received out-door relief.⁷ The directors of the poor cannot bind out a child, at the request of its mother, so as to deprive the father of the right to its custody.⁸

Directors May Bind Infants in Neighboring District.

"In an appeal by the commonwealth from an order of the court of quarter sessions of Cumberland county, quashing the third count of an indictment against James Coyle and others, for neglect and violation of their duty as directors of the poor and of the house of employment in said county. It was the only count in the indictment in which the offence was laid *contra formam statuti*. It was obviously framed on the theory

³ Ex parte Whiting, 3 Pitts. 129.

⁴ Commonwealth v. Vanlear, 1 S. & R. 248.

⁵ Commonwealth v. Jennings, 1 Bro. 197.

⁶ Ex parte McDonald, 4 Luz. Leg. Reg. 255; s. c. 7 Leg. Gaz. 333.

⁷ Commonwealth v. Farley, 3 Clark, 49.

⁸ Commonwealth v. Will, 14 L. Bar. 16.

that in binding an infant pauper settled in their district to a person residing in an adjoining county, the defendants committed a misdemeanor in office. If the contention based on this theory is sound, it was an error to quash the count. But the learned counsel for the commonwealth have not referred us to any statute which requires in express terms or by fair implication that the binding-out shall be to a resident of the district of the pauper's settlement, or to a decision of any court which sustains their claim that the officials charged with the care of the poor in one district cannot lawfully apprentice an infant pauper to a fit person in a neighboring district. Nor has our own research brought to our notice any such statute or decision. It seems to us that it is at least questionable whether a restriction upon the power of the officials in accordance with the commonwealth's contention would be for the best interest of the persons most likely to be affected by it. It might often happen that such a restriction would deny to a poor child a good home with a kind master, and thus materially interfere with his physical, intellectual and moral advancement. We cannot say, therefore, that if the defendants had bound young Diller to a suitable person in Adams county they would have exceeded their lawful powers, or violated any duty they owed to the lad or to the district they represented." *

Habeas Corpus, to Produce the Body of an Indentured Infant.

"It appears, from the return of this habeas corpus and the evidence which has been given, that Caroline Rodney, a female child, was bound apprentice to James Walker, until she should attain the age of eighteen years, by 'the directors of the poor, and the house of employment, for the county of Franklin.' At the time of the binding the father and mother of the child were imprisoned, under a conviction and judgment for larceny, and previous to the binding, the child had

* *Commonwealth v. Coyle et al.*, 160 Pa. 36.

been sent to the house of employment, to be supported as a pauper, by virtue of a warrant under the hands and seals of two justices of the peace for the county of Franklin.

"By the fourth section of the 'act to provide for the erection of a house for the employment and support of the poor, in the county of Franklin,' passed March 11, 1807, the directors are authorized to bind out as apprentices, so that the apprenticeship may expire, if males, at or before the age of twenty-one years, if females, at or before the age of eighteen, such poor children as shall come under their notice, or as may now be bound apprentices by the overseers of the poor. At the time when this act was passed, the overseers had power, 'by the approbation and consent of two justices of the peace of the county, to put out apprentices, all such poor children whose parents are dead, or as shall be by the said justices and overseers found unable to maintain them; males to the age of twenty-one years, and females to the age of eighteen years.' It appears to us, that the construction of the act of March 11, 1807, is this: The directors of the poor of Franklin county, may themselves bind apprentices, such children as shall come under their notice as paupers, by warrant of two justices of the peace; and they may also in conjunction with two justices, bind 'such children whose parents are dead, or as shall by them, the said directors and two justices, be found unable to maintain them.' This construction satisfies all the words of the law, is attended with no inconveniences, and is agreeable to the practice of the directors, ever since the erection of the house of employment in Franklin county. Inasmuch, then, as Caroline Rodney was sent to the house of employment by a warrant of two justices, we are of the opinion that the indenture is valid, and she must return to the service of her master." ¹⁰

The act of March 28, 1806, P. L. 624, gives no power to the directors of the poor of Dauphin county to bind a child

¹⁰ Commonwealth ex rel. Rodney v. Walker, 12 S. & R. 169.

out as an apprentice, unless he or she is chargeable upon the county. Under the act of September 29, 1770, Dunlop's Laws, 100, the mother of a minor has no power to bind her out as an apprentice when the father is living and competent to act. The court will allow a child fourteen years of age to choose his own place of residence.¹¹

Directors or Overseers of the Poor May be Indicted for Neglect, Etc.

"An indictment against directors of the poor for permitting a pauper of tender years to be so grossly maltreated as to result in his death, will be sustained where the evidence shows that the defendants were informed that the person to whom they bound the child was of bad character, that his house was an unsafe place for so young a boy, and that his parsimony and cruelty in the treatment of poor children committed to his care was well known in the neighborhood in which he lived.

"In such a case it is the duty of the directors of the poor, after a child is bound to service to see that the covenants of the master are substantially complied with, and if they are wilfully and persistently violated to the injury of the child's health, to institute necessary proceedings to set aside the indenture.

"A public officer may be prosecuted and punished for misdemeanors in office after his term has expired."¹²

For what is evidence of cruelty, we refer to the facts in this case.

Assignment of Indenture, Mode of.

While this is the law in reference to binding poor children, namely, that their assent is not necessary to such binding out as apprentices, yet when it comes to assigning such indentures to a third party, the second section of the act of April 11,

¹¹ Commonwealth ex rel. Sheesley v. Martin, 1 Pearson, 30.

¹² Commonwealth v. Coyle, 160 Pa. 36.

1799, 3 Sm. 386, seems to be still in force, and Mr. Justice Duncan, in delivering an opinion, says: "But the objection to the assignment appears to me insurmountable; sufficient has appeared in the course of this investigation to satisfy us of the fairness of this assignment, and that the boy and his father, in substance did consent to this assignment. Independent of the positive proof, the long continuance in the service of Mr. Jones; the acquiescence of the father residing in the same township; the frequent visits of the son to the father, and the perfect satisfaction of both, with the consent of Mr. Jones; the application by the brother to purchase out the remainder of his time, and the habeas corpus avowedly sued out because Jones refused to part with him, offered the strongest internal evidence of this consent in fact, and I would gladly prevent this attempt to deprive Jones of his services when he has arrived at that time of life; that his services would be most valuable, from meeting with success. But the court cannot dispense with the provisions of the law. They cannot accept of a substitute or equivalent for the mode prescribed by the legislature.

"A master cannot assign over his apprentice; the person of a man is not strictly and legally assignable: Burr. Set. Ca. No. 135, 1 Mass. Rep. 172, 8 Mass. Rep. 299. The right and the mode of assignment depend on statutory provisions. On the death of the master, by the act of April 11, 1799, his executors or administrators may assign to such suitable person of the same trade or calling as may be approved of the court of quarter sessions. Now the approbation cannot be by parol; it must be entered on record as all other acts of the court are, and this, then, is the prescribed course in that case. But as assignments of apprentices by their masters would more frequently occur, the legislature, in order to afford reasonable facility, direct another course. 'And when any master shall assign over his apprentice, the assignment shall be legal, provided the term of the indenture extended to assigns, and provided the apprentice, or his or her parent or

parents, guardian or guardians, shall give his, her, or their assent to such assignment, before some justice of the peace of the county where the master resides.' . . . An assignment where the consent was given before a justice of another county, would be void. Certainly, then, when not given before any judicial officer, it must be so. Here, then, it is not pretended that the consent of the father, in any form, or at any time, was given before any magistrate. This is a condition annexed to the instrument to give it validity; if it wants it, it is void. It is as much required as that the indenture should extend to assigns. It has been justly compared to the consent of a *feme covert* to the acknowledgment of a conveyance.

"When the law prescribes an act to be done before a judicial officer, it necessarily imports that there should exist some written memorial of the act being so done, to which recourse can be had, in all controversies respecting it; something which will perpetuate it; some written testimonial which will be evidence of it. It is not to float on the memory of the officer; it is not to die with him. In the multiplicity of concerns entrusted by our laws to justices of the peace, what a door would be opened to misapprehension, mistake and contradiction, if the memory were to be the only record of their official acts! I incline, therefore, to the opinion that the law require some written testimonial of the justice of the consent of all whose consent is required to the assignment. The justice of the peace of the proper county is the judicial officer before whom the consent is to be given. He, in the examination of the father and of the apprentice, is to judge of the fullness and fairness of the consent. It is to be not mere loose, casual conversations, but an examination in the discharge of a duty required of him by law, and he is made the judge of such consent. On any other construction, the wise and salutary condition annexed to the assignment of apprentices, to prevent fraud and imposition on those most likely to be imposed on would be defeated, and the check and con-

trol of these assignments by the agency of a judicial officer, be of no real importance: *Com. v. Vanlear*, 1 S. & R. 248."¹⁸

Act of June 13, 1883, P. L. 111.

An Act to prohibit the receiving and detaining of children in almshouses and poor houses, and to provide for the care and education of such children, it is provided as follows:

Detaining Children in Almshouses Illegal. P. & L. Dig. 2305, § 17.

Section 1. Be it enacted, etc., That it shall not be lawful for the overseers or guardians or directors of the poor in the several counties, cities, boroughs and townships of this commonwealth, to receive into, or retain in any almshouse or poor house, any child between two and sixteen years of age for a longer time than sixty days, unless such child be an unteachable idiot, an epileptic or a paralytic, or otherwise so disabled or deformed as to render it incapable of labor or service.

Provision for Care of Children. P. & L. Dig. 2305, § 18.

Section 2. It shall be the duty of said overseers or other persons having charge of the poor, to place all pauper children who are in their charge, and who are over two years of age (with the exception named in the first section of this act), in some respectable family in this state, or in some educational institution or home for children; and one of the said officers shall visit such children in person or by agent, not less than once every six months, and make all needful inquiries as to their treatment and welfare, and shall report thereon to the board of overseers or other officers charged with the care of such children.

Counties May Combine for Care of Children. P. & L. Dig. 2305, § 19.

Section 3. It shall be lawful for any county, or two or more counties in this commonwealth acting together, to es-

¹⁸ *Commonwealth v. Jones*, 3 S. & R. 158.

tablish and maintain an industrial home for the care and training of children ; but such institution or home shall be remote from any almshouse or poor house, and entirely disconnected from the same, and under separate management from the keeper of the poor house.

Section 4. This act shall go into effect on the first day of January, one thousand eight hundred and eighty-four, and all acts of assembly, or parts of acts inconsistent therewith are hereby repealed from that date.

CHAPTER VIII.

MODES OF GAINING SETTLEMENT.

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Modes of Gaining Settlement. P. & L. Dig. 3549, § 143.

Act of 1836, Section 9. A settlement may be gained in any district.

By Executing a Public Office.

Clause I. By any person who shall come to inhabit the same, and who shall for himself and on his own account, execute any public office, being legally placed therein during one whole year.

So far as our researches go this clause has not received any judicial construction.

By Payment of Taxes.

Clause II. By any such person who shall be charged with and pay his proportion of any public taxes or levies for two years successively.

"The question whether, in case the collector in settlement of his duplicate, pays a tax which he has not collected, does such payment give to the person charged with the tax a settlement with like effect as if he himself had paid it?

"Where a person seeks to establish a settlement by the payment of taxes the act of 1836 requires he 'shall be charged with and pay his proportion of any public taxes for two years successively,' as it was held in *Butler v. Sugar Loaf*, 6 Pa. 262,

that payment of rent by a surety was payment by the lessee, so as to give a settlement to the latter, it is therefore claimed that the payment of a tax by the collector should give settlement to a person charged with the tax.

"We think the cases differ widely. In the former a contract relation was created between all the parties at the execution of the lease. The lessee and his surety assumed an obligation at the same time to pay the same debt. That was, if the former did not pay, the latter would. The lessee was to pay through another if he did not do it personally. It was therefore held a payment by the lessee. It was a payment of the rent according to the agreement under which the tenancy was created. It was paid to the lessor by one of the two persons who agreed to pay him. The payment was in fulfilment of the agreement and to discharge the claim of the lessor against the lessee and his surety. It was not a voluntary payment.

"In the present case the payment by the collector was voluntary, so far as the person who was charged with the tax was concerned. He made no agreement with the collector for its payment. It was not only paid without his request, and without his knowledge, but apparently for one of the two years, contrary to his wishes. The evidence is that in the fall of 1872 he said to the collector he would not pay any taxes. The contention is in regard to the payment of taxes for 1872 and 1873. The collector made a general payment of all the taxes mentioned in his duplicates for those years, and the small tax against this person, not having been exonerated, was covered by this payment. It was in no sense such a payment by the person who appears to have had no property, as the statute requires, to give him a settlement."¹

Evidence of Payment.

In another case the question was whether the pauper had gained a settlement in Lewisburg, by reason of the payment

¹ *Beaver v. Rose*, 98 Pa. 636.

of taxes there. The facts are stated in the opinion of the court, which was delivered by Kennedy, J, and who amongst other things says:

“It therefore becomes necessary to consider whether it has been proved by competent testimony, that George Conrad (the pauper) was charged with and paid his share towards the public taxes or levies for the poor of the borough of Lewisburg, for two successive years of 1831 and 1832. John Rebor, the first witness on the part of the appellees, testified that he was collector of the borough of Lewisburg in the year 1832, of county tax; also produced his duplicate, showing that George Conrad was charged with thirteen cents county tax, and six cents state tax; that witness was satisfied these taxes were paid, as they were marked like all the rest that were paid. William Wallace, another witness on behalf of the appellees, testified that he was collector of county taxes in the borough of Lewisburg for the years 1831 and 1833. He also produced his duplicates, which were read in evidence to the court below, showing that George Conrad was charged with a county tax for each of these years. The witness further testified that these taxes were marked paid, and as he believed, in his own handwriting that he had no reason to believe that George did not pay them; that he had no recollection of the payment without looking at the duplicates; that the only reason he had for believing that George paid them was because they were so marked; that if his duplicate had been lost he could not have testified that the taxes charged to George for the years 1831 and 1833, respectively, were paid; but he had no reason to believe but what George Conrad paid them. The testimony of these witnesses stands uncontradicted, and without anything whatever going to impugn it in the slightest degree. But it is objected that the duplicates produced and read in evidence were not the best evidence of the taxes mentioned in them having been charged. And again, that the evidence of the taxes therein charged having been paid by George Conrad, was insufficient, because

the witnesses could not recollect the fact distinctly of their having been paid by him, so that if paid at all it might have been done voluntarily by some other person; possibly for a fraudulent purpose. In support of the first objection it is alleged that the original assessments, which are filed in the office of the commissioners of Union county, or certified copies thereof, would have been better evidence of the taxes having been charged against the pauper than the duplicates; and therefore they ought to have been produced. But what are the duplicates? They are in fact certified copies of the assessments with warrants annexed thereto from the commissioners of the county, certified under their hands and seals of office, and directed to the collectors, respectively, therein named, authorizing them to proceed and collect the taxes therein specified. But these duplicates, although in point of fact they are transcripts of the assessments remaining in the commissioner's office, yet *ex vi termini* they may be regarded here as importing something more than mere copies, something of the same kind, equal in every respect and consequently equal in verity to their protocols. But at all events, the duplicates being made out and certified by the commissioners, under their hands and common or the county seal, would seem to be evidence of as high a nature and quite as veritable as copies of the assessments certified by their clerk under the county seal, which are expressly made good evidence by the 22d section of the act of the 15th of April, 1834. The evidence then being competent, and also plenary to establish the fact that George Conrad was charged with public taxes, not only for two, but three years successively, while a resident in the borough of Lewisburg brings us to the consideration of the next objection: that the testimony is insufficient to prove the payment of these taxes. The witnesses adduced for this purpose, it must be observed, were the collectors themselves with their respective duplicates and warrants in their hands, by which they were authorized and required to collect these taxes. They say that these taxes for

the years 1831, 1832 and 1833, were paid, because they are marked as paid on their duplicates; that they do not recollect the fact of their having been paid, but have no doubt that it was so, for they are marked as paid by themselves; and that they would not have done this if the fact had been otherwise. Neither can they recollect that these taxes were paid by George Conrad himself, but they have no reason to believe that they were paid by any other person. Now it must be recollected that the collector of taxes is a public officer specially appointed and clothed with the public authority for that purpose. A registry therefore, made by him in writing, of his having performed certain duties as such, is not to be looked upon merely as a memorandum or registry made by a private individual of his transactions, but as an official act, to which some degree of faith and credit at least, is to be given, on account of the public confidence reposed in him, for his integrity and truth, which is evidenced by his appointment to the office. Hence I am inclined to believe that the production of the duplicate and warrant, with a return or mark made on it by the collector that the tax has been paid, with proof that such return or mark was in his handwriting, would be sufficient to prove that the tax was paid, without calling the collector himself for that purpose. This is frequently done in the case of a sheriff, where he has returned money made on a writ of *feri facias*; and why should it not be so in the case of a collector of public taxes? In principle there is no distinction between the two cases, and in every such case it is not only evidence that the money has been paid, but evidence likewise, that it was paid by the party charged and bound to pay it. Great public inconvenience would inevitably arise if no evidence could be given of their official acts, except by calling them forward to testify to the fact, and then not to be permitted to give evidence of it unless they have a distinct recollection of it." Decree affirmed.²

² *Lewisburg v. Augusta*, 2 W. & S. 65.

Assessment Books and Duplicates are Evidence.

In a settlement case proof may be made of assessment of taxes by a witness who produces before the examiner appointed to take the testimony the books of assessment from the proper office, and in the presence of the parties, states in his deposition the items of the assessment in question as therein contained, no objection being made at the time to that mode of proof.

The duplicate issued to a collector containing taxes charged against a person, when returned by the collector to the treasurer marked "paid" opposite the tax, is *prima facie* evidence it was paid by the person charged.³

The assessment books of Shippen township, Tioga county, for the years 1838 and 1839, showed the name of William Swartwood, and a valuation of his property at sixty dollars, but no assessment of any tax, nor any further proof of assessment or payment of tax than was contained in said books. The court below held that the last legal settlement of the pauper was in Shippen township. From this decision the township of Shippen appealed. It was assigned for error, *inter alia*, that there was no evidence of even an assessment of taxes against William Swartwood, in Shippen, much less any payment; nor did the evidence show that Swartwood had gained a settlement in Shippen by any of the eight requisites mentioned in the ninth section of the act of 1836.

Coulter, J., in delivering the opinion, *inter alia*, says: "There is, perhaps, some little obscurity in the testimony as to the last settlement being in Shippen, but it preponderates over the evidence adduced to establish a settlement in Delmar. It appears that William Swartwood, the father of Simeon Swartwood (the pauper), was regularly assessed in Shippen township for the years 1838 and 1839, for 25 acres of land at \$2 per acre—\$50, and one cow, \$10—the rate of taxation being one

³ Danville and Mahoning District v. Scranton Poor District, 2 Luz. Leg. Reg. 457.

per cent. It is objected that the amount is not carried out in the assessment book; but that is a small circumstance because whatever is made certain by the face of a document is to be considered as certain. The amount of the tax for each year was 60 cents, just as certainly as if it had been carried out, and so easily ascertained that no mistake could be made. The abatement books of Shippen township for the years 1838 and 1839 were in evidence, in which the names and the amount of those abated are given, and among which the name of William Swartwood is not contained, and there is for both years an acknowledgment or receipt for the balance not abated to the collector. This evidence being legally admissible leads to the proof of payment of taxes for those two years, in Shippen, by William Swartwood, quite satisfactorily, although the collector was not produced; perhaps was dead or removed. Swartwood removed to Delmar township, and was there assessed in 1841, 1842 and 1843. It appears that he had made a parol contract for a small piece of land, but the witness said it always belonged to the person with whom he made the contract. He then removed to Gaines township. It appears from the abatement book that his taxes were abated in 1842, and for the years 1841 and 1843 the abatements are in gross, and neither names nor sum given; so that we cannot say that there is actual evidence of the payment of any tax in Delmar. Swartwood's taxes were abated in 1842 in that township, certainly, and for the other two years it is just as likely that he was among the abatements as that he was not; and, perhaps, the presumption is stronger that he was abated than not, from the fact of his being abated in 1842. In regard to his owning land in Delmar, the parol contract spoken of by the witness was, probably, a mere license to live on it, as the witness says he believes the land always belonged to Stowell, whom he considered the real owner. Swartwood abandoned it and went into Gaines. We think, therefore, that he was not seized of a freehold estate in Delmar, and that he had no settlement there, either on that account or by the pay-

ment of taxes. His last legal settlement was, therefore, in Shippen. Simeon Swartwood was an idiot from infancy, and his last legal settlement followed that of his father." ⁴

Payment of County Tax.

"The question whether a legal settlement can be gained by the payment of county taxes only depends on the 17th section of the "act for the relief of the poor," passed March 9, 1771, Smith's Laws, 332. The words of the law are as follows: 'If any person shall be charged with, and pay his or her share towards the public taxes, or levies for the poor of the said city, borough or place (of which he or she is an inhabitant) for two years successively, such person shall be adjudged and deemed to gain a legal settlement in that city, etc.'

"These words admit of two constructions: 1, that a settlement may be gained by paying *either* the *public* taxes, or the *levies of the poor*. 2. That the settlement can be gained by paying those taxes which are laid for the support of the poor *only*. On this construction the words *taxes* and *levies*, are synonymous, but on the first construction, by *public taxes*, is understood *state* taxes, or *county* taxes, and not levies for the poor. On the first reading of this law one is apt to be struck with the impression that a settlement can be gained only by paying the poor tax; because there seems to be a propriety in ordering that those only should have the benefit of the poor tax, who had contributed to the support of the poor. But upon further reflection it is difficult to assign a reason for refusing a settlement to those who have contributed to the public wants, in a greater degree, than if they had paid a poor tax; that is to say, by payment of a *state* or *county* tax, which generally are much higher in amount than the poor tax; and the difficulty is increased when we consider that in some townships there are no paupers, and consequently no poor tax; so that a man may have paid large sums toward the state and

⁴ Shippen v. Gaines, 17 Pa. 38.

county taxes, without a possibility of gaining a settlement. If, then, the case rested solely on the words of this act of assembly, without light derived from any other source, the mind would be left very much in doubt as to its true meaning. But fortunately, there is another source, which throws sufficient light on this subject to render it plain. We find in our statute book two other acts for the relief of the poor prior to the act now in question; one passed in the year 1717 (Weiss & Miller's Laws, Vol. I, p. 72); the other passed in the year 1734: same book, p. 138. By both these acts a person might gain a settlement by being charged with and paying his share towards the county taxes, or levies for the poor. It is evident that county taxes are here distinguished from levies for the poor, and the payment of either gained a settlement. But in the act of 1771, the expression county taxes is altered to public taxes. We are therefore immediately led to inquire into the reason of this alteration; and a most satisfactory answer is given by the late Judge Biddle, in his opinion, in the case of Middletown (in Bucks county) against Abington (in Montgomery county), decided in the year 1793. In the years 1717 and 1734, says Judge Biddle, when the two first acts were passed, there was no provincial tax, and therefore a settlement was gained by payment of a county tax. But in 1771, there was a provincial tax, and it was therefore right that a settlement should be gained by paying either a provincial or county tax; and therefore the legislature used the word public instead of county, meaning to comprehend in that expression both provincial and county taxes. I have examined Weiss & Miller's edition of the laws, published in 1762, containing all the acts from the year 1700 to 1759, which were in force at the time of the publication, and the titles of all such as have been passed during that period, and were expired or repealed; and from all that I have been able to find, Judge Biddle was correct in stating that there were no provincial taxes in 1717 or 1734. I am there-

fore quite satisfied that the decision in the case of *Middletown v. Abington* was right, and that a settlement may be gained by payment of county taxes only.

"The act of 1836 only mentions 'any public taxes or levies,' and would therefore bear the same construction as the act of 1771, if not one still broader, by reason of the word 'any.' " ⁵

Payment of a Federal Tax.

"It was once a question whether the payment of any but a poor tax gained a settlement under this law (1771); but this court decided in the case of *Bucks County v. Philadelphia*, 5 S. & R. 417, that a settlement might be gained by the payment of a county tax. It is now contended that a direct tax, laid by the congress of the United States, is a public tax, and therefore a settlement is gained by the payment of it. Undoubtedly it is a public tax, but it does not follow that it was within the intent of the act of assembly. It could not have been contemplated by the legislature of Pennsylvania, in the year 1771, that a political revolution would take place, in consequence of which this state would be associated with a number of others in a federal government. A tax of this kind could not, therefore, have been directly intended. But, it is said, that neither could any tax have been directly intended, which would be laid under the authority of the state, for county purposes, after she threw off the authority of the British crown, and became independent. There is a great difference, however, between taxes laid by the authority of the state, for her own particular use, and for the use of a government, composed of many states, of which she is a member. And there is much more reason for considering the former as within the meaning of the act of 1771 than the latter. State taxes, county taxes and poor taxes, laid since

⁵ *Bucks County v. Philadelphia*, 5 S. & R. 417.

the revolution, are applied to precisely the same purposes as they were before it. So far as respected them the change of government was but nominal. There was reason, therefore, to conclude, that as to them, a settlement should continue to be gained under the state, as it had formerly been under the province of Pennsylvania. But a tax laid by the federal government is quite a different thing, and laid for quite different purposes. The money may be applied to purposes in which the state has a remote concern; nor can it in any sense (so far as it respects Pennsylvania), be considered as a public tax, except that the people of the state have consented that congress should have power to lay it. To be sure, it is of a public nature, and it is lawfully laid. But it is not, in any point of view, a state tax, and therefore, it seems to me, it would be straining the act of 1771 to an unaccountable extent, to make it embrace a tax of this kind. It has nothing local in its nature, and there is no reason why the payment of it should throw the burden of a pauper's maintenance on one township, rather than on another. There is another reason why the payment of this tax should not gain a settlement. In order to preserve uniformity of principle, if we say that payment of an United States tax gains a settlement, we must say also, that executing an office under the United States would gain one; a proposition which could hardly be seriously contended for. If the legislature should think it politic to annex the right of a settlement to the payment of a tax laid by the United States, a law will, no doubt, be made for that purpose. In the meantime, it would be usurping the legislative functions for this court to say that such right was given by the act of 1771." ⁶

Payment of Road Tax.

"The poor district of Benezette township, Elk county, claimed that the place of legal settlement of certain paupers

* *Bucks County v. Brier Creek Township*, 10 S. & R. 179.

was in Houston township, by reason of the payment of road taxes for two consecutive years, and that this would give them a settlement under Section 9 of the act of 1836. Is the payment of road taxes within the meaning and intendment of the act, and are they such 'public rates and levies,' as are contemplated by said act? The court below held that the words 'public rates and levies' have received a judicial construction by the supreme court. By two acts for the relief of the poor—one passed in 1717 and the other in 1734—a person might gain a settlement by being charged with and paying his share towards the county taxes or levies for the poor. County taxes in these two acts were distinguished from levies for the poor, and the payment of either gained a settlement. In 1771 an act was passed for the relief of the poor, in which the expression county taxes is altered to public taxes. In the years 1717 and 1734 there was no provincial tax, and therefore a settlement was gained by payment of county tax. In 1771 there was a provincial tax, and the legislature used the word public instead of county, meaning to comprehend in that expression both provincial and county taxes. The same expression is used in the act of 1836, 'public taxes and levies,' which mean state (instead of provincial) or county taxes.

"We are therefore of the opinion that a settlement cannot be gained by the payment of a road tax." ⁷

This case was, however, reversed by the supreme court May 26, 1890, 26 W. N. C. 278, that court holding that "a road tax is a public tax within the meaning of the act of 1836, Section 9, which provides that a settlement may be gained in any district by any person 'who shall be charged with and pay his proportion of any public taxes or levies for two years successively.'"

"Under the acts of 1717 and 1734 a settlement was gained by any person who was charged with and had paid his or her

⁷ *Houston v. Benezette*, 7 Pa. C. C. R. 383.

share toward 'the county taxes or levies for the poor' for two years successively, but in the act of 1771 the expression 'county taxes' was changed to public taxes. A question afterwards arose whether a county tax was a public tax within the meaning of the act of 1771, and it was decided that a legal settlement might be gained under the act of 1771, by payment of a county tax only. In stating the probable reason for changing 'county' to 'public' C. J. Tilghman said that in the years 1717 and 1734, when the first two acts were passed, there was no provincial tax, and therefore a settlement was gained by payment of a county tax, but in 1771 there was a provincial tax, and it was, therefore, right that a settlement should be gained by paying either a provincial or a county tax, and the legislature used the word 'public' instead of 'county,' meaning to comprehend in that expression both provincial and county taxes. The only point decided was that a county tax was a public tax. We do not understand the learned chief justice to say that this was the full extent to which the rule of construction would apply; he simply decided the case before him, the language employed by him in his opinion in terms covered that ground and no more. But if a tax, when it is imposed throughout the whole state, as the appellees appear to contend, how could a county tax have been so considered; and if as that case explicitly decided a county tax is a public tax, then upon what system of argumentation shall it be maintained that a township tax is not also a public tax." ⁸

Payment Must be by the Person Charged.

The payment of taxes must be the act of the person charged, and while it may be made by his agent, in such case the agency should appear either by express proof or by facts and circumstances which fairly establish its existence. It will not be considered a payment by the party when it appears

⁸ *Houston v. Benezette*, 26 W. N. C. 278.

that without his authority or approval, a tax was paid by a member of a political committee, in order to entitle the party in whose name the tax was assessed to vote.⁹

Payment of Tax by Another Person.

"A pauper was born in the county of Snyder, near Beavertown. He resided at times in the township of Beaver, in the county of Snyder, where his father was chargeable as a pauper; in the township of Centre, in the same county, and in Armagh township, Mifflin county. He seems to have been a bird of passage, without a fixed habitation, and 'he hung up his hat wherever he came,' as the witness says. The evidence fails to show that he had a settlement in the township of Centre.

"It is an admitted fact 'that Jacob Bubb is not assessed in any other district of Mifflin county than Armagh township, and only for the years 1874 and 1875; that in the year 1874 he was assessed as a single man, and as having his home with F. Havice, and that, in the year 1875, he was assessed as a single man, and as having his home with Solomon Wagoner.'

"It is also admitted that the list of voters for the township of Armagh discloses that Jacob Bubb voted in said township at the general election in 1874, his vote being No. 50, and at said election in 1875, his vote being No. 41. The contention on the part of the defendant is that there was another Jacob Bubb residing in Armagh township, and that there is not sufficient evidence to identify Jacob Bubb, the pauper, as the one who was assessed and voted in Armagh township.

"We find, as a fact, that the pauper in dispute was assessed in 1874 and 1875 in Armagh township, and that he voted there. It is also admitted that the duplicate for those years shows that the taxes assessed against Jacob Bubb, fifty cents, state and county for 1874, and forty-five cents for 1875, are

⁹ *Lawrence Overseers v. Delaware Overseers*, 148 Pa. 380.

marked paid. If these taxes were paid by the pauper or some one else at his request, or under circumstances that would render him liable to an action for reimbursement at the suit of the party paying them for him, there is an end of the case, and the settlement of the pauper would undeniably be in the county of Mifflin. On the other hand, if they were not paid by him or his privity, but were paid by a volunteer, he could not acquire a settlement: *Butler v. Sugar Loaf*, 6 Pa. 264; *Poor Directors of Beaver Township v. Poor District of Rose Township*, 98 Pa. 636. The taxes being marked paid on the duplicate is *prima facie* evidence that they were paid by the pauper himself: *Scranton v. Danville*, 106 Pa. 447. But this may be rebutted. In the case in hand, Mr. Barefoot, the collector of taxes for those years, swears positively that they were not paid by the pauper. He testifies that he never knew him. The pauper, too, swears that he never paid the taxes himself, nor did he ever request or authorize any one to pay them for him. Indeed, he swears with distinctness that he knows not who paid them for him. It is true the pauper is an illiterate, ignorant man, and the declarations imputed to him by Mr. Fred. Bolig seem to be in conflict with his oath. Mr. Bolig testifies: "Jacob Bubb told me that he had paid two years' taxes in Mifflin county, but they were not paid by himself; they were paid by some one else for him, but they were paid without his knowledge and consent, and he voted there two years in succession." On his cross-examination he says: "And he said, I never paid any tax anywhere I know of but in Mifflin county; my tax was paid for me, but he said, I cannot now any more say who paid the tax for me, but at the time I knew it; he said they looked who had paid their taxes, and then they came around to those who had not paid the taxes and found how they intended to vote, and if they thought they would vote right they paid the taxes for them. He said nothing of the kind that he had ordered them to pay taxes for him." Then when recalled in chief, he said: "The pauper said he had paid it,

and he had voted on it. He said he did not order them to pay it. I do not recollect whether he said he consented or not; but I know he said he voted on it.' We cannot say that the evidence fairly contradicts the pauper. The latter denies that he ever told Mr. Bolig that his taxes were paid for him with his consent. Mr. Bolig says, in chief, that he did say so; but when he was re-examined in chief, he said he did not remember whether he had said so or not. At most, then, the evidence of Mr. Bolig is not contradictory to that of the pauper in a material matter. It seems clear from all the evidence that the taxes were not paid by the pauper, but were paid without his privity by some person who wanted him to vote. The mere fact that the pauper voted, after his taxes had been paid by another without his request, would not make him liable to the party thus paying. We are clear that no action would lie to recover back the money paid under such circumstances. The constitution demands that each elector shall pay his own taxes as a qualification to vote. The voluntary payment of taxes by individuals or political committees for others is a monstrous evil. No court could hold that they might be recovered back when voluntarily paid as an inducement to obtain the vote of the elector charged with their payment. To do so would legalize the debauching of elections and the corruption of voters.

"The evidence failing to show a settlement of the pauper in the county of Mifflin, it follows that the order of removal must be discharged." ¹⁰

Payment of Tax by Political Committee.

"The Anthony overseers contended that the pauper lost an admitted settlement by birth in their township, (a) by payment of taxes for two years successively in Delaware township, (b) by a similar payment of taxes in Turbut township,

¹⁰ Centre Township Overseers v. Mifflin County Poor Directors, 3 Pa. C. C. R. 555.

Northumberland county. . . . The county tax of 1887, and the county, school and poor taxes of 1888, charged against the pauper, were paid to the collector of Turbut township, but the payment of 1887 tax was not such a payment as is contemplated by the act of 1836. It was not a payment by the pauper in person, or through an agent, nor was it with his money. It is clear from the testimony that one Deeter, a candidate for a public office, either without knowledge of the pauper, or pursuant to an understanding between them, paid this tax in expectation of securing the pauper's vote, and for no other consideration.

"The transaction was contrary to public policy and illegal. It was not a payment by the person charged as required by the act of assembly.

"The law demands substantial contribution indicative to some extent at least of an ability to pay, as distinguished from a state of pauperism. 'The payment must be by the person charged.' *Lawrence Overseers v. Delaware Overseers*, 148 Pa. 380.

"One who pays taxes for votes is a mere volunteer, not an agent, and not until the elective franchises shall be legally recognized as an article of commerce to be bartered and sold, will such voluntary payment be held to be the act of the taxable within the meaning of our poor law.

"Finding, therefore, that the pauper had a settlement by birth in Anthony township, and that he did not acquire a settlement by payment of taxes either in Delaware township or in Turbut township, we dismiss the appeal."¹¹

This case on appeal was reversed by the supreme court.

"The evidence was not disputed, and the payment of taxes for the years 1887 and 1888 was clearly shown; but it was contended that the payment of taxes for 1887 was made by one Deeter, who had been a candidate for county office in

¹¹ *Delaware Township Overseers v. Anthony Township Overseers*, 15 Pa. C. C. R. 431.

1887, and who paid the tax in May, 1888, in consideration of the fact that Derr had voted for him.

"The finding of the learned judge is 'that one Deeter, a candidate for public office, either without the knowledge of Derr, or pursuant to an understanding between them, paid the tax in expectation of securing Derr's vote, and for no other consideration.' From this finding of fact he concludes as matter of law that 'the transaction was contrary to public policy and illegal,' and did not amount to payment as between the public and Derr. For this reason he held that the settlement by birth continued to be the legal settlement of the pauper. The correctness of this legal conclusion from the finding of fact on which it rests is the point on which the case turns. The finding of fact is in the alternative. It does not determine whether the tax was paid by Deeter without Derr's knowledge, or 'pursuant to an understanding between them;' but asserts that in either event the consideration for the payment was the 'expectation of securing Derr's vote.' The legal conclusion covers both branches of the alternative, and holds that whether the payment was made by Deeter, with or without Derr's knowledge, or with or without previous arrangement between them in pursuance of which the payment was made, it was not a good payment. The reason given for so holding is not that the payment could not be in either event the payment of Derr, but that whether his payment or not, the transaction was against public policy. The learned judge added, 'Not until the elective franchise shall be legally recognized as an article of commerce to be bartered and sold, will such voluntary payment be held to be the act of the taxable within the meaning of our poor law.'

"The just indignation of the learned judge at the venality of some voters, and at the readiness of some candidates to buy and sell the ballots of citizens, led him to overlook the real point involved. It was a question of legal settlement he had to pass upon. That depended on the payment of

taxes by the alleged pauper. Whether he stole the money with which to make the payment, or obtained it as the price of committing some other crime, was not the question; but did Derr pay or procure the payment of the tax? In *Overseers of Lawrence Township v. Overseers of Delaware Township*, 148 Pa. 380, the question was whether the payment of a tax by a political committee, to qualify the taxable to vote, made without his request or authority, was a payment by him within the meaning of the poor laws. We held that it was not. That case was followed by *Dallas Poor District v. Eaton Poor District*, 161 Pa. 142, but it was said in the latter case that it was not necessary that the tax should be actually paid by the taxable in person. It was enough if it was paid by his procurement and authority, or if paid without such previous authority, the payment was ratified, and repayment made or undertaken by the taxable. It may make much difference in morals whether Derr obtained the money with which to pay his taxes by honest labor, or by embezzlement, or theft, or by going to the polls and selling his vote to the highest bidder, but his settlement does not depend upon the result of an examination into the methods by which he secured the money. It depends on whether he paid the taxes in person or by the hand of another who acted for him. If, therefore, the fact was as the finding of the learned judge assumed, it might have been, that Deeter paid the taxes for 1887 assessed against Derr 'pursuant to an understanding between them' that he should do so, it was a payment by Derr, and gave him a legal settlement in Turbut township. The decree appealed from is reversed, and the order of removal quashed."¹²

Payment of a poll tax by a political committee without the voter's knowledge or authority, for the purpose of quali-

¹² *Delaware Township Overseers v. Anthony Township Overseers*, 170 Pa. 181.

fyng him to vote, is not such a payment of taxes as will give the voter a settlement under the poor laws.

It seems, however, that such unauthorized payment may be ratified and adopted by the return of the money so paid, or by an undertaking to repay it.

The father of a pauper lived in a township between two and three years before his death. In one of the years had paid his tax himself, in the other the tax had been paid by a political committee. He had maintained himself by his own labor and his pension money, without becoming a public burden. He had aided his son-in-law by a small loan to purchase a home, but had not purchased or leased real estate himself. Held, that he had acquired no settlement under the poor laws.¹³

May Gain Settlement by Payment of Tax, Though Receiving Relief for Wife.

Elwell, P. J.: "Jerry Coates having a settlement in Danville, resided there with his wife and family from 1855 to 1869. In the latter year his wife became insane, and was, with his knowledge, placed in a lunatic hospital by the directors of the poor of Danville district, where she remained, at the expense of that district, until 1882, when an order was obtained for her removal to Scranton. In 1875 Coates abandoned his family and his residence in Danville, and went to Scranton, where he resided for seven years, during five of which in succession he was assessed with and paid his proportion of public taxes in Scranton district.

"Held, that he gained a settlement in Scranton for himself and wife, notwithstanding the fact that she was during that time receiving relief from the Danville district."¹⁴

This case on appeal was affirmed by the supreme court.

¹³ Dallas Poor District v. Eaton Poor District, 161 Pa. 142.

¹⁴ Danville & Mahoning District v. Scranton Poor District, 2 Luz. Leg. Reg. 457.

Must Also Have Come to Inhabit.

Under the act of 1836, Section 9, a person cannot acquire a settlement by merely paying "his proportion of the public taxes or levies for two years successively." He must also have "come to inhabit" in the district.¹⁵

"A settlement under the provisions of the act of 1836, Section 9, Clause 2, cannot be gained by a payment of taxes, by one who at the time the taxes are paid, is chargeable to and receiving aid as a pauper from another district.

"If, however, one is lawfully charged with taxes and pays them during two years, it does not necessarily follow that his acceptance of temporary relief, under an order for which he did not apply, prevents him from obtaining a settlement."¹⁶

By an act passed July 15, 1897, P. L. 276, payment of any occupation or poll tax assessed against any elector, except on the written and signed order of such elector authorizing such payment to be made, which written and signed order must be presented at least thirty days prior to the date of holding the election at which such elector desires to vote. That it shall be unlawful for any officer to collect taxes and receipt therefor, to receive payment of or receipt for any occupation or poll tax assessed for state or county purposes from any person other than the elector against whom such tax shall have been assessed, except upon his written and signed order as aforesaid. And that it shall be unlawful to vote or attempt to vote at any election upon a tax receipt obtained in violation of the act. And declares that any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof in any court of quarter sessions, be punished by imprisonment not less than twenty days nor more than six months, in the discretion of the court, or by such fine not exceeding \$200, as said court shall impose.

¹⁵ *Cowanshannock v. Valley*, 152 Pa. 504.

¹⁶ *Lawrence v. Delaware*, 148 Pa. 380.

* P. & L. Dig. Sup. 284, Sections 32-35.

By Taking a Lease of Real Estate, Etc.

Clause III. By any person who shall *bona fide* take a lease of any real estate of the yearly value of ten dollars, and shall dwell upon the same, for one whole year, and pay the said rent.

Four Distinct Things are Necessary.

A pauper "must (a) take a lease; (b) the premises leased must be of the yearly value of \$10; (c) he must dwell thereon for one whole year, (d) and pay the said rent. Nothing less than a compliance with all of these requirements satisfies the statute. Each of them are questioned. The plaintiff in error seeks to establish them by the arrangement under which Hetrick occupied a house in Rose township. In November, 1871, he entered into a written agreement by which he was to clear and fence eleven acres of land, at a specified sum per acre, and the job was to be finished some time in September following. About the same time there was a verbal arrangement between them by which Smathers was to furnish lumber for Hetrick to build a small house in which he might live while doing the work. Smathers furnished the lumber, and either Hetrick by himself, or jointly with his son, built the house and occupied it while at work at the job. Hetrick moved out of the house and left it about September 1 following, and the job was completed on or before September 15.

"The evidence did show the annual rental of this house was of the yearly value of \$10, and that the labor of Hetrick in building it may have exceeded that sum; but it signally failed to show that he dwelt therein for one whole year. An attempt is made to fill out the year by showing he afterwards dwelt in another house of Smathers, in the same township. It does appear that some two months after he moved out of the former house he did enter into and occupy for some time a log house of Smathers, in the same township; but this he did without any arrangement with the owner, and without his

permission. He took no lease and paid no rent therefor. On no principle can such an occupancy be tacked to the occupancy of the other house to make a full year. It was not a continuous dwelling for one year in the township, nor was the occupancy of the last house under either an express or implied lease. Hence the case of *Allegheny City v. Allegheny Township*, 14 Pa. 138, does not apply. There the pauper had resided one continuous year in the city of Allegheny, although in different houses, yet in each under a contract to pay rent, and in the aggregate did pay more than \$10 rent. He was all the time dwelling in some house under a stipulated rental. The whole evidence shows Hetrick was not, in any view of the case, under a rental more than ten months, and beyond that he was merely a trespasser.”¹⁷

Dwelling in Two or More Houses Within One Year.

Jacob S. Page, having dwelt more than one year in three different houses continuously, each being of the yearly value of \$10 and more, and having paid more than \$10 rent, all the said houses being in Milford township, the court below held that said Jacob S. Page gained a settlement in Milford township, and that Milford township is the settlement of his minor son, Stewart W. Page, the pauper.

Upon appeal to the superior court, it was, April 19, 1897, by a *per curiam* affirmed.¹⁸

“The evidence shows that the pauper had a legal settlement in Pittston township by residing therein for one year in one or more tenements, and during that time paying at least \$10 rent: *Allegheny City v. Allegheny Township*, 14 Pa. 138. Neither does it seem to be material that the money which paid the rent was the earnings of her minor son. According to the testimony of Mrs. Leighten, the lease for one of the houses, at any rate, was to the mother, and

¹⁷ *Beaver v. Rose*, 98 Pa. 636.

¹⁸ *Fermanagh Township v. Fayette Township*, 4 Super. Ct. 570.

she paid the rent. The son had a right to give her his wages; indeed, this was his duty as a son, and the township is not in a position to assert that he would not be legally bound to do so. See *Burrell v. Pittsburg*, 62 Pa. 472.”¹⁹

The evidence in another case showed “that the pauper resided in the city of Allegheny, as a housekeeper, for more than one year, and the jury have found he paid more than \$10 rent. That the pauper resided in different tenements, we decided to be immaterial in a case decided at Sunbury, at our last session, and not yet reported. Nor do we think it of any moment that he did not pay all the rent, according to contract. If he paid part, that is enough, provided the payment exceeded the sum required by the act. This is the reasonable construction of an act, always interpreted liberally, in favor of the unfortunate class. Suppose he had resided in a house, at a rent of \$500, would it be just that he should be deprived of a settlement because he had failed to pay the last instalment, or a less sum? In other words, having, in good faith, paid \$450, would it be right to deprive him of the support the law allows, because, through unavoidable misfortune, he was unable to discharge the residue of the rent remaining due?” Judgment affirmed.²⁰

Lease Need not be in Writing.

A man named Shat Lateer was hired for the season as a farm hand at \$20 per month, together with a house in which to live for one year, cow pasture and firewood. Under this agreement Lateer and his wife occupied the said premises, and the wages were paid Lateer for the season. More than \$20 were paid. It can be fairly inferred from the evidence that not only the money wages, but also the use of the house, which was worth \$18 per annum, the pasture and the fire-

¹⁹ *Dennison Poor District v. Pittston & Jenkins Poor District*, 1 Luz. Leg. Reg. 340.

²⁰ *Allegheny City v. Allegheny Township*, 14 Pa. 138.

wood, entered into the agreement for hire. It is not necessary that the lease, mentioned in specification 3, Section 9, of the act, should be in writing. The rent may be paid in labor or otherwise, if the value of the equivalent is \$10 per annum: *Beaver v. Hartley*, 11 Pa. 254. Again whether he paid all the rent when contracted is not material: *Allegheny City v. Allegheny Township*, *supra*. It cannot be doubted that the value of the house as a dwelling for himself and family entered into the contract between Lateer and Franklin. It is not disputed that the house was worth from one to one and a half dollars a month. I cannot see why, under the authorities, the lease has not been sufficiently proven and that its yearly value was more than \$10.

Conclusions of Law.—“Upon the marriage of Lillie Lateer and Shat Lateer, her residence became that of her husband, and remained such until she acquired another according to law.

“The evidence fails to show that the husband, a minor, took a lease of real estate in Huntington township, in good faith, of the yearly value of \$10, and dwelt thereon for one whole year.

“In other words, the case is decided against Salem and in favor of Huntington township because Shat Lateer did not dwell on the Franklin premises for one whole year. Therefore, under all the evidence in the case, the last legal place of settlement of Shat Latter, Lillie Lateer and their child is not in Huntington township, and the order of removal is discharged.”²¹

Burnside, J.: “Long, a pauper, while residing in Beaver township, Union county, with his family, became chargeable. He was removed by an order of two justices to Hartley, from which order the overseers of Hartley appealed to the quarter sessions, who quashed the order of removal. The question was whether, under the evidence, Long, having a wife and

²¹ *Huntington Township v. Salem Township*, 8 Luz. Leg. Reg. 234.

children, had acquired a settlement in Hartley township. . . . The evidence was clear that Long and his family resided for about two years at Berlin Iron Works, in Hartley township. He came in 1845, when they were building the furnace, and worked by the day for some time. On July 4, 1845, he went in the furnace as keeper, at \$22 per month; he had a house and garden, and firewood into the bargain; part of the time his wages were increased to \$24 per month. He was there more than a year after this. The house was considered part of his wages. He was told the house-rent was a good lift to him. When his wages were raised to \$24 per month, he wanted \$26. He was told by the manager that he ought to consider the house and privileges that he had at least worth \$2 a month. He was told what rent he would have to pay at other places. He considered and admitted it was so. The house had a garden, and was a story and a half high, with a small kitchen to it.

"All the hands that had families were furnished with houses. Married men were preferred, because they drew provisions and store goods. They did not give away these houses. They were offered at so much per month, and if they wanted more, they were told the house was worth something.

"This is an important inquiry, as respects that class of men and their families who work at iron works, as well as other factories in this state. Nearly all our factories are well supplied with dwelling-houses for the laborers who have families, and in which they reside. Many have boarding-houses for the single men. There is not a factory in Pennsylvania that the owner or employer does not receive a high rent for those houses, either directly or indirectly, either by contract in rent, or contract for labor; and the evidence in this case satisfies us that Long paid \$24 a year rent for his house. He was a tenant at will, and dwelt on the premises more than one whole year.

"It is not necessary that the lease mentioned in the act

should be in writing; going into possession and paying a rent for the premises that are of the yearly value of \$10, and dwelling upon the same one whole year, gives a settlement. No one can doubt but that Long paid his rent by his labor, which was principally paid for by the provisions he drew for his family and the articles taken from the furnace store.

"That the house and appurtenances was a tenement within the statute is to me manifestly clear. He paid rent beyond the value of \$10, and he dwelt in it more than a whole year with his family.

"The statute does not require a written lease, or that the rent shall be paid in money. It may be paid in labor or otherwise, if the house is occupied and the value of the labor or other equivalent exceeds \$10 in value. A reference to a few cases illustrate this.

"A yearly servant hired in husbandry, had by an agreement a house and garden, a rood of potato ground, and the keep of a cow on the master's land. The keep of the cow was instead of so much wages. The cow having failed in her milk, the master, in place thereof, kept two heifers for him on his land, through kindness, and not in consequence of any bargain. The potato land and the keep of the two heifers being together above the value of £10. Held, that this was renting a tenement so as to confer a settlement: *Rex v. Benniworth*, 4 Dowl. & Ryl. 555; 2 B. & C. 775. Repairing gates is equivalent to rent: *Rex v. Whitley*, 1 T. R. 137. A settlement may be gained by a tenement of the yearly value of £10, though the rent of it be less: *Rex v. Blisdale*, Burr. Set. Ca. 828; 2 Bell's, P. L. 137. A man was hired by a farmer residing in parish B. as his shepherd. It was agreed between them that he should have a cottage in B. rent free, and the going of one hundred and five sheep, with his master's flock. The term 'going' meant that the sheep should be pasture-fed, and the feeding or pasture in B. was worth £10 per annum. Held, upon a special case stating these facts as found by the session, that it was to be inferred from the case

that the feeding of the cattle was to be in the parish B., and therefore that there was a letting of a tenement of £10 per annum in that parish: *Rex v. Nactor*, 3 B. & Ad. 543.

"The evidence in the case is that ironmasters do not give away their houses for nothing. The township, wherever the works are, ought to support their poor.

"The order of the sessions is quashed, and the order of removal of the two justices of the peace is affirmed." ²²

Lease from Year to Year.

"Where a person rents a house and garden attached to a farm for one year, with the privilege of continuing from year to year, and the rent is to be paid in part by work on the farm, he acquires a poor settlement under Clause 3 of Section 9, of the act of June 13, 1836." ²³

License to Maintain Shanty.

"Madore Rose, a pauper, in 1875, made a contract with one Delo, for the right to enter and dig coal from a coal-bank then opened on the land of Delo, situate in the township of Beaver. The right thus to dig and mine coal was to continue as long as said Rose kept the bank in good repair, and he was to pay for said coal a certain royalty or price per bushel. After Rose had entered and commenced mining and digging coal, on his application to Delo he was granted a privilege or license to erect a shanty at the mouth of the mine, in which he lived during his operation of the coal bank, which continued for some three years. He paid no rent or consideration for said privilege or license to keep and maintain such shanty. For the two years after making the contract he paid for the coal mined a sum exceeding \$15 per year.

"Under these facts, as above stated, the only question to be determined by the court is whether the contract relation

²² *Beaver v. Hartley*, 11 Pa. 254.

²³ *Milton Borough v. West Chillisquaque*, 20 Pa. C. C. R. 547.

between Delo and the pauper, Rose, was that of lessor and lessee of real estate of the yearly value of \$10, upon which the pauper dwelt one whole year. That it was not seems clear from the terms of the contract. It was a sale of coal in the ground, to be mined at the will and pleasure of the vendee as to time and quantity. There was no lease of any tenement by Rose for the purpose of a dwelling. He paid no rent or consideration for his occupation of the surface of the land. The privilege or license given him to maintain the shanty by the evidence was wholly without consideration. A contract to purchase and remove timber, either by the foot cubic or lineal, the toll, or at a certain sum per acre, is not a lease, but is a contract of sale, although the purchaser operates under the contract for a period exceeding a year, and pays more than \$10 for the timber taken. The same would be the case in contracts to purchase ores, limestone, oil or other minerals. The fact that there was a privilege or license, without consideration, to erect shanties or houses would not make the purchasers lessees, or the contractors lessors." ²⁴

Rent Paid for Portions of Different Years, Cannot be Tacked.

"Where a tenant dwells on leased premises for one year, but pays less than \$10 rent, and then dwells upon the same leased premises, under a different lessor, during ten months of the second year and pays more than \$10 rent. Held, that the rent paid to the second lessor could not be added to the rent paid to the first lessor so as to make the necessary \$10 to gain a settlement.

"The rent paid under the second lease cannot be tacked to the rent paid under the first. If it could, then a settlement might be gained by any person who shall *bona fide* take a lease of any real estate of the yearly value of \$10 under a written agreement for the term of eleven years and pay one dollar

²⁴ Elk Township v. Beaver Township, 6 Pa. C. C. R. 562.

rent each year. For if you may tack the rent of one year to the rent due for a former year, it is not easy to see why you may not tack the rent of any number of years. It is true that in the second year of the case under consideration there may have been so large an excess of rent above \$10 paid that there was above \$20 paid during the two years. Nevertheless it was rent taken from under a lease that gave no settlement in order to help out a settlement under a former lease, and it is not very material whether the later lease gave no settlement by reason of too little rent paid or too short occupancy. In either case it is an attempt to get credit for payment of rent to the first lessor for the first year by showing that the rent had been paid for some other subsequent year or to some subsequent lessor. We can see no difference in principle between an attempt to fill out the year by showing that the lessee afterwards dwelt in another house in the same township without permission, and an attempt to fill out the rent by showing that the lessee afterwards paid more than \$10 under a different lease to a second lessor, and it has been decided that the first mentioned attempt cannot be accomplished: *Beaver Township v. Rose Township*, 98 Pa. 636." ²⁵

Evidence of Payment of Rent.

By the docket of a justice of the peace it appeared that suit was brought against B., the husband and father of the paupers, whose settlement was the subject of controversy, for rent due on a lease to him of a certain house, and that said suit after the admission of a set-off of \$5, resulted in a judgment against B. of \$17.50, upon which he afterwards paid \$10. Held, that this was legitimate evidence of a lawful demand for and payment of rent to the amount above specified.

Under the poor laws a settlement cannot be acquired by leasing alone, there must also be the payment of rent, but this money need not be paid in money; it may be paid in the

²⁵ *Walker Overseers v. Milford Overseers*, 12 Pa. C. C. R. 321.

equivalent of money, labor or other services, and hence where one contracts to pay in services it is competent to show that he did not comply with that contract, and as a consequence did not gain a settlement in a poor district thereby." ²⁸

Insufficient Evidence of Lease.

"An order of removal issued by two magistrates, was reversed by the court of quarter sessions on the ground that the pauper had acquired a settlement in Walker township, by leasing real estate therein of the yearly value of ten dollars, dwelling on the same for one whole year and paying the rent. Daniel Delany, the pauper, came from Ireland to this country in 1871. He was then a single man over twenty-one years of age, and from the time of his arrival here until 1886, when he suddenly became insane, and was taken to an asylum, he lived in the family of his uncle, John Delany, who, with the exception of four or five months, resided in Marion township until the fall of 1879, when he purchased a small farm in the township of Walker, on which he has since lived. A few months before they went to Walker Daniel was married, and at the time he became insane he had four children. It is admitted that prior to that removal to Walker Daniel was legally settled in Marion, and it follows that he is chargeable there until it is affirmatively shown that he afterwards acquired a legal settlement elsewhere. The contention of Marion is that Daniel was a tenant of John during the period of their residence in Walker, and as such he occupied premises of the yearly value of \$10, and paid the rent therefor. To this the township of Walker replies there was no contractual relation between them concerning the occupancy of the house in which they lived, it belonged to John, who with his wife and Daniel, his wife and children, constituted one family, in

²⁸ *Overseers of Laporte Borough v. Overseers of Hillsgrove Township*, 95 Pa. 273.

the support of which the produce of the farm were used without division, and no account kept by either of his contributions. This reply is supported by the direct evidence, by the circumstances surrounding the case, by the relations of the parties, and their expectations respecting the succession to the property. In the use of the house there was nothing inconsistent with the family relation, or indicative of a distinct possession by Daniel of any part of it. It was a small house having only a kitchen and bed-room on the first floor, and whether there was more than one room upstairs the evidence fails to inform us. The fact that a family occupy separate sleeping rooms does not warrant an implication that they are tenants of one of their number, who is the owner of the premises. John had no children and Daniel was his favorite nephew. It was understood between them that at the death of John and his wife Daniel should 'inherit the property.' If a lease and obligation to pay rent lurked in this understanding they did not know it. A lease cannot be fairly implied from circumstances and conduct which show that none was intended by the parties. All these contracts grow out of the intentions of parties to transactions, and are dictated only by their mutual and accordant wills. When the intention is expressed, we call the contract an express one. When it is not expressed, it may be inferred from circumstances as really existing, and that the contract thus ascertained is called an implied one: *Hertzog v. Hertzog*, 99 Pa. 407. In the case under consideration the existence of an express agreement, having either the form or substance of a lease, is distinctly negatived by a direct and positive testimony, the credibility of which is not questioned, and the evidence is not sufficient to justify an inference that Daniel leased from John any part of the house in which they lived. In the absence of a lease between them, the evidence of the yearly value of the farm and Daniel's work upon it, becomes immaterial, and the question raised by it requires no discussion. All the specifications of error founded upon a finding that Daniel was a tenant of

John while living with him in Walker township are sustained." ²⁷

The decree of the quarter sessions was reversed, and the order of removal confirmed.

Lease for Life.

"The question was, whether a pauper, Jefferson Schaffer, a married man living with his wife, had gained a settlement in Brady township according to the second, third or fourth mode described in the act of June 13, 1836.

"By an agreement under seal it was stipulated that in consideration of an assignment by a married woman of her interest in her father's estate, the grantor agreed to let the said married woman and her husband 'live on and occupy the lot upon which they now live, rent free, during the term of their life,' they paying taxes, and at the death of the said Elizabeth Schaffer and Jefferson, her husband, the above to revert back to grantor or his heirs, with all the improvements thereon. It was shown that the husband was present when the writing was made and assented to it, and that he took possession of the lot and assisted her in the payment of the taxes.

"Held, that taking all the circumstances into consideration, this constituted a lease for the lives of the grantee and her husband and the survivor of them, and was hence a freehold estate in lands.

"The pauper then had a freehold estate in land seized in his own right. He could hold as long as he lived and paid the taxes. The estate was situated in Brady township, where he has continued to reside upon it with his wife since 1885. But since that time and April 26, 1888, the date of issuing the present order of relief, subsequently followed by the order of removal and appeal, has he acquired a new settlement in said Brady township?

"As to the first mentioned mode we hold that he did not,

²⁷ Walker Overseers v. Marion Overseers, 148 Pa. 1.

because the evidence clearly satisfies us that he was neither charged with nor did he pay his proportion of public taxes for two years successively.

"Neither did he take a lease, *bona fide*, under the statute, nor pay the rent according to the second above-mentioned mode of gaining a settlement. Where the husband does not make the lease, nor obligate himself in any manner to pay rent, the payment by the wife on a lease signed by herself as lessee is not a lease or payment of rent by the husband sufficient to confer a settlement upon him by the statute. A husband does not derive a settlement by or from the acts of the wife, as the wife does from her husband. Whether or not he acquired a new settlement by the third aforementioned mode we regard as the most serious question. Has he dwelt upon his freehold estate in Brady township one whole year in such manner as will give him a settlement there? This depends upon the fact whether he was a pauper during that time charged to Clinton township, and received or should have received aid from said township between July 27, 1885, and April 26, 1888, and is a question of fact to be determined by the court upon a careful consideration of all the evidence in the case. . . . The facts clearly show that the pauper was a recognized and established charge upon Clinton township, one which they could not nor did not rid themselves of between April 10, 1885, and April 26, 1888, the latter date being the order of relief upon which the present order of removal was taken."

The court below affirmed the order of removal, which upon appeal by the overseers of Clinton was per curiam affirmed by the supreme court.²⁸

Taking a Lease by Deserted Wife.

"The question whether a married woman who is deserted by her husband can, on account of such desertion, without

²⁸ Brady v. Clinton, 148 Pa. 311.

a divorce, a *vinculo matrimonii* or a *mensa et thoro*, acquire by her own acts a settlement in her own right, different from the place of settlement of her husband; and if so, did the pauper in this case do so?

“The case of the Overseers of the Poor of Parker City against the Overseers of the Poor of Dubois Borough, reported in 9 Atl. Rep. 457, seems to us to settle the first question. It was held in that case that a wife who has separated from her husband because of his intemperate habits and his failure to support her and her children, can gain a settlement distinct from that of her husband by leasing real estate and living upon it, by virtue of Pennsylvania act of May 4, 1855, Section 2, giving to such a woman the rights of a *feme sole* trader, which settlement, so gained, can be communicated to her children who live with her, etc. Section 2 of said act provides, among other things, as follows: ‘Whensoever any husband from drunkenness, profligacy, or other cause, shall neglect or refuse to provide for his wife, or shall desert her, she shall have all the rights and privileges secured to a *feme sole* trader under the act of February 22, 1718,’ etc. By virtue of this act the wife, in case of desertion, is given the right to acquire property and hold her separate earnings, and no decree of the court declaring her a *feme sole* is required. She may, in pursuance of this act, exercise any right which may be exercised by a *feme sole* trader, and is in the same position, with respect to her husband, as if he were dead and she were a widow; or at least her rights are equal to those of a married woman who has been divorced *a mensa et thoro*, which does not sever the marriage relation but simply is a separation from bed and board. The only difference we can see between the case in hand and that where a divorce *a mensa et thoro* has been granted is that in the former case her husband’s conduct has separated her from his home, while in the latter case the law has separated her from it. The legal consequences in both cases are the same, so far as her rights to acquire property, receive and hold her earnings

and to make contracts binding herself for her benefit are concerned.”²⁹

A Widow May Acquire Settlement by Leasing.

“The testimony is positive that Sarah Edmonson rented a house and land in Mifflin township, after the death of her husband, for one year, resided on it for that time, and paid the rent. This gave her a right of settlement there, although at the time of her husband’s death she was entitled to a settlement in Elizabeth. This did not prevent her from acquiring a subsequent settlement by her own acts when she was *sui juris*, by complying with the requisites of the law.”³⁰

A Widow May Gain a Settlement which is Communicated to Her Children.

“There was no dispute below about the fact, that the father of the pauper, Weir, had at the time of his death, which occurred in the minority of the latter, a legal settlement in Burrell township. The dispute was whether the mother had gained such a settlement, in the Ninth ward of the city of Pittsburg, as fixed it as the settlement of her son. The learned judge ruled this in the negative, and hence this writ of error.

“The undisputed facts seem to be that Mrs. Weir, the mother of the pauper, removed to the city of Pittsburg in 1869, from Johnstown, Cambria county, where she had resided, her sons living with her, some six months or more, and took a house in the Ninth ward of the city of Pittsburg, at the rental of \$3.25 per month, and lived there, keeping house, her sons with her as her family, for thirteen months consecutively, during all of which time she paid the rent as agreed until she died; and from that time her son, the pauper, became utterly imbecile, wandering about without capacity to

²⁹ Woodford Township *v.* City of Lock Haven, 13 Pa. C. C. R. 157.

³⁰ Mifflin Township *v.* Elizabeth, 18 Pa. 17.

take care of himself, until the order of removal was issued which gives rise to this controversy.

"It has been repeatedly decided (15 Pa. 145, 12 Pa. 92 and 3 S. & R. 117), and cannot now be a question, that children, until they have acquired legal settlements by their own acts, remain settled where born, the settlement of their parents being their settlement. That is a deduction from the statute, for it is not so expressly provided by the act of 1836. But the act expressly provides that after the death of the husband the wife's legal settlement shall be deemed to be the place where he was last legally settled. This is equivalent to the expression 'shall be taken to be,' and admits of the existence of a different state of facts, namely, a settlement acquired by the widow herself; and so it has been decided: *Mifflin Township v. Elizabeth Township*, 18 Pa. 17. That the widow may acquire a legal settlement thus, admits of no doubt. She may undoubtedly lease or buy real property and occupy it, being *sui juris*, as well as another. Still we have no reported decisions which carry a derivative settlement to her children, as a consequence of her settlement. Nor is there any statutory provision or decided case against it, in this commonwealth. Why, therefore, shall it not be so on principle?

"It is the headship of the family which gives to the settlement acquired by the father the same right to his unemancipated children. Why, therefore, should not this be so, of the last legal settlement of the mother, when she by death of her husband becomes the head of the family? I see not wherein charges upon the public would be increased by application of the rule to an acquired settlement by the mother. She if of sufficient ability, like her husband if living, is liable by the statute to maintain her children, and keep them from becoming a public charge. There is no distinction in this respect. Nor is there any difference in the process and mode by which she acquires a settlement, from that of any other person. She becomes entitled to it by a compliance with the

terms of the act of assembly, by leasing property of a certain yearly value, residing therein and paying the rent for one whole year, or by purchasing real property, occupying it and paying taxes thereon for the same length of time. In the same way, the husband, if living, would acquire a settlement for himself, and which would be communicable to his children. It is neither according to the natural or statutory law, that a woman is to separate from her children, or they from her, on the death of her husband; nay, more, they cannot be taken from her. What good reason can there be alleged why, when necessity, it may be, induces the widow with her family to leave the place of her husband's last settlement with a view to better her or their children's condition, that she shall not, on complying with the terms of the law, acquire a settlement communicable to her children? I see none, and I think there is none.

"In England there is none, as has been decided in many cases: *St. George's Parish v. St. Catharine's* 1 Sessions Cases, 73; *Lord Raym.* 1474; *Fortescue*, 218. So in *Rex v. Barton Turfe and Happesburg*, 2 *Lord Raym.* 1734. It was thus held that a child may gain a settlement under its mother's settlement, after the father's death, equally as under its father while living. The mother's settlement has the same effect upon the child as the father's had: *Burr. Settlement Cases*, 72, and in 3 *Burn's Just.* (374) 442. See also *Rex v. St. George's in Hanover Square, Set. Cases*, 278. There is no difference between an acquired and derivative settlement: *Ib.* 482.

"In Massachusetts the same thing has been held in several cases. *Dedham v. Natick*, 16 *Mass.* 135, is a decision in point, and contains a reference to others. *Wilde, J.*, in rendering the decision of the court, in the latter case, says, 'The mother, after the death of the father, remains the head of the family. She is bound to support them if of sufficient ability; and they cannot be separated from her.' And in concluding in favor of the derivative settlement from the mother, he re-

marks, that this accords with the English decisions on the subject. The same doctrine is announced in *Great Barrington v. Tyingham*, 18 Pick. 264; in *Bradford v. Lunenburg*, 5 Vt. 481; *Hebron v. Cochester*, 5 Day, 169; *Norwich v. Saybrook*, 5 Com. 384, and in *Lebanon v. Belure*, 6 Ib. 45.

"More cases to the same effect might be cited, but we think it unnecessary. It is not an answer to this view of the case that the common law distinguishes between the rights of father and mother, in relation to the right of suit on account of services, or for injuries to children, growing purely out of the relation of parent and child. The cases cited by the learned counsel for the defendant in error, *Leech v. Agnew*, 7 Pa. 21, and *Fairmount Passenger Ry. Co. v. Stutler*, 54 Pa. 375, mark this. The distinction seems to be that as the mother is not by implication of law bound for maintenance and education of her children, while the father is, therefore she is not entitled to claim for services or injury as parent merely. But this is the difference between their parents, in relation to private parties; as to the public, in regard to their children, they are on precisely the same footing; each is bound to maintain them against becoming a public charge. As to the public, therefore, each should derive the same results from settlement and communicate similar consequences to their children, where no statute or policy forbids it."⁸¹

Payment of Rent in Services.

On an appeal from an order of removal, to the quarter sessions of Northumberland county, it was held that "William Fry, the pauper, cultivated Clinger's farm from April 1, 1894, to April 1, 1896, under a contract of hiring. The written agreement made him Clinger's hired servant. The possession of the farm and everything appurtenant thereto, outside of the house and garden, was in Clinger. As to the house and garden, the relationship was different. Fry was to have

⁸¹ *Burrell Township v. Pittsburg Guardians of the Poor*, 62 Pa. 472.

the use of the house and garden, in addition to other compensations, for services rendered, as long as he complied with the agreement. This he had for a definite term, to wit: one year, and, if he continued on the premises after the expiration of what the parties themselves termed a lease, he was to continue from year to year, until Clinger gave him legal notice to quit. The use of the house and garden, as expressed in the agreement, means the exclusive use. There is nothing in the agreement indicating a different intention.

"The use of the house and garden was given Fry 'for service to be rendered.' We know of no reason why the owner of the farm may not lease any part thereof and retain the possession of the balance. He may rent one field and keep another. He may lease the stable and give possession to the lessee. So he may lease the house and garden and retain possession of the farm. That is what, according to the agreement, was done in this case.

"The yearly value of the house was above \$10, and as Fry occupied it for two years, and, in accordance with the contract, gave his services in part for the rent, he gained a settlement in West Chillisquaque township, under Clause 3, Section 9, act of June 13, 1836: *Overseers of Beaver Township v. Overseers of Hartley Township*, 11 Pa. 254; *Overseers of Laporte Borough v. Overseers of Hillsgrove Township*, 95 Pa. 269."²

The order of removal was affirmed, and the appellants were directed to pay the costs, charges and expenses incurred by the appellees in the relief and removal of the said William Fry and family as well as the costs of the case.

Payment of Rent by Surety in Lease.

"Whether a pauper had obtained a settlement in Butler township by occupation under a lease and payment of rent,

² *Overseers of Milton Borough v. Overseers of West Chillisquaque Township*, 20 Pa. C. C. R. 547.

under the act of 1836, was the question raised. Prior to 1840 the two townships (Butler and Sugar Loaf) constituted one. In 1840 Allen (the pauper) leased a house in Butler for one year at \$1 a month, with one Skull as his surety. He continued to reside there for one year, and the rent was paid by the surety, who was partially repaid by Allen. The justices refused an order of removal, and the court below (Conyngham, P. J.) confirmed this order for the following reasons:

“‘Under the evidence it would seem to be clearly established that Silas Allen had at one time a settlement in Sugar Loaf, and removed into Butler, and there occupied real estate, as tenant under a written lease, for one full year, at the rent of \$12 per annum; that this rent was paid, part thereof, \$1.23, by Allen, and the balance by Skull, his surety in such lease, whose advances were again in part repaid by the wife of Allen delivering to him a bushel of wheat, value ninety cents, and a stove, with pipe, valued at \$5.’ Whether this payment of the rent be sufficient to establish a settlement under the words of the act of June 13, 1836, is the question now to be decided.

“The ninth section of that act, third clause, provides that a settlement may be gained ‘by any person who shall *bona fide* take a lease of any real estate, of the yearly value of \$10 and shall dwell upon the same for one whole year, and pay the said rent.’ All the pre-requisites are here proven, except the disputed one, of whether the pauper paid the rent. It is conceded to have been paid, and there is no dispute about the fairness of the payment; but did Allen make the payment? Directly, it was settled by his surety, Skull. Is this, in law, to be considered a payment by Allen? The debt for the rent no longer exists; how and under what particular circumstances, and why it was paid, we know not; we only know that it was paid and discharged by one who was bound to pay the amount, and whom Allen, for any balance yet unpaid, is bound to remunerate. If Allen had borrowed the

money of Skull, and had paid the rent himself; or if he had requested Skull to pay it for him, on a promise of repayment, there would have been no question about the effect, though, in fact, the rent would then have been paid by the credit only of Allen, without the advance of a single dollar by him. Whether Skull was ever repaid the loan, in fact, would not vary the result. Is there any difference, then, in the effect of a payment by a surety, who is called upon to comply with his obligation, and to whom, under such circumstances, so far as the liability of the principal to refund is concerned, the law implies a request to pay? The indebtedness of the principal or borrower in either case, would continue the same; and the only difference of the bases, upon which the respective claims would stand, would be between an implied and an express request or promise—a difference without any legal distinction. The lessee in the several cases mentioned would cause the rent to be paid, and for all legal purposes, it would be regarded as an actual payment by him, except between himself and the party assisting him.

“The claim of settlement is a privilege the tenant has a right to look to, at the termination of his lease. Suppose, in a case like the present, he is unable to meet his rent on the day it becomes due, and the surety pay it, and the next day the tenant repays the advance, is his right of settlement gone? Must he remain another year before he can establish a claim upon the township? It is the payment of rent which establishes the settlement, and that is paid by the surety; the repayment to him is only for so much money paid out for the tenant, and is such to be regarded as rent. There might be such a case, that the courts would subrogate the surety to the rights of the landlord; but this would only be in equity for the benefit of the surety, and never for the benefit of the tenant, to revive a right which his neglect to pay at the day in such case would have lost.

“The construction of such a payment being a payment by the tenant is recognized by the supreme court in the state

of New York, in a case partly analogous, when the question of settlement turned on the payment of a tax by the pauper: *Wallkill v. Mamakating*, 14 Johns. 87. There it was held that the voluntary payment of the tax by a collector would not be sufficient to charge the township. And why? 'The payment of the collector,' as the court say, in their opinion, 'was not at the request of the pauper, nor under circumstances that would have allowed the collector to maintain an action;' 'and unless the pauper could have been made liable to the collector, he could not have been said to have paid.' The reverse of the rule, equally clear, would be, that wherever there was a legal liability over, then if the tax (or in our case the rent) should be paid, it would be considered as made by the party for whose benefit it was done. In the very case now before us the appellants adopt this rule, in claiming that the settlement of Allen in Sugar Loaf is partly established by the payment of a tax for him by Smith, his employer, repaid, it is true, in the settlement between them afterwards; but still the tax was paid for him by another, and not directly by himself. It is believed, too, that under the general principles established by our own supreme court (*Heidelberg v. Lynn*, 5 Wharton, 433) the spirit of the act would sustain the same view of the case. The pauper here was of 'benefit to the township as a producer,' causing the rent to be paid, at least by the credit which he had, and having thus, on his part, fully satisfied the consideration for which the township agreed to support him, the township should now fulfil its part of the contract.

"It is to be remembered that in this case no question is raised as to the *bona fide* character of the payment of the rent; this is proved by a citizen of Butler, who, it is not to be supposed, would be desirous of fraudulently burdening his township with the pauper, and he states it as an ordinary business transaction. Had the payment been made by a stranger, or even by a surety for the special purpose of fixing the pauper upon the township, it would have been regarded as fraud-

ulent, and this fraud would probably in law have defeated the dishonest purpose. Such are the decisions in *King v. Tillingham*, 1 Barn. & Adol. 180, 20 E. C. L. R. 374, and *The King v. St. Sepulchre*, Ibid, 924; Ibid, 508, believed to have been established in the construction of the Stat. of 6 Geo. 4. Section 57, providing that in order to establish a settlement the rent should be 'actually paid.'

"Upon consideration of the case submitted in the depositions, the court are of the opinion that the rent has been paid by the pauper within the spirit of the act of 1836, and that he thereby acquired a settlement in the township of Butler, and, therefore, the judgment of the justices refusing an order of removal is affirmed." Upon certiorari the supreme court affirmed the judgment of the court below, for reasons given in their opinion.³⁸

One Year, Computation of.

"Sarah Johnson, the pauper, was the wife of Charles Johnson, and her settlement, therefore, was the district where he was last legally settled.

"Charles Johnson had, *bona fide*, taken a house in Lewis township of the yearly value of \$10, and paid the rent, and he and his wife (the pauper) dwelled on the premises so leased from the afternoon of April 2, 1890, until the forenoon of April 1, 1891. The question arose whether under this state of facts, Charles Johnson, the husband, dwelt upon the premises so leased for one whole year, within the meaning of the act of 1836. 'Leases beginning on April 1 expire on March 31 following; the old tenant giving up and the new tenant coming in on April 1 without a gap in the possession.' *Duffy v. Ogden*, 64 Pa. 240. In the case of *Queen v. Inhabitants of St. Mary Warwick*, 1 Ellis & Blackburn, 815, it was held that when one entered at noon on September 30, 1850, and quitted in the afternoon of September 29, 1851, it was an

³⁸ *Butler v. Sugarloaf*, 6 Pa. 262.

occupancy for the term of one whole year, within the statute: 1 W. 4, c. 18, Section 1.

'The law takes no account of the fractions of a day. Hence both days are considered as whole days, although as a matter of fact the actual occupancy was only for the fraction of a day.

"But it was contended that since the act of 1883, in the computation of the time, the first day must be excluded; this act does not apply to the case before us. The act evidently was intended to cover all cases where an act is ordered and directed to be done or performed by any law or rule of court during or within a prescribed period.

"Where, as in the case at hand, certain rights are acquired by virtue of an act performed and the continuance of a certain state of facts for a prescribed period, the computation of time must be most favorable to the party whose rights are affected thereby. The dwelling on the premises must continue for one whole year. Where, as in this case, it is an actual fact that he occupied the premises continually on every day which composed the year, it is clear that he has complied with the requirements of the statute. We therefore find the place of the last legal settlement of Charles Johnson to be in Lewis township, and that this is the settlement of Sarah Johnson, the pauper." ⁸⁴

Being Seized of a Freehold Estate.

Clause IV. If any person shall become seized of any freehold estate within such district, and who shall dwell upon the same for one whole year.

Under the act of March 9, 1771, a settlement was not gained by a purchase of a freehold estate, and a residence thereon for a year, if the pauper being uncertified, refused to give security to indemnify the township, etc., on a requisition to that effect, made within a reasonable time after his com-

⁸⁴ *Cascade v. Lewis*. 11 Pa. C. C. R. 282.

ing; and such pauper might lawfully be removed from the freehold, into the township from which he came.³⁵

It has been held that a pauper gains a settlement by contracting for a town lot, under a yearly rental charge, building thereon a residence, though he obtains no deed for it.³⁶

Parol evidence of a freehold is admissible on a question of settlement.³⁷

Freehold on Condition.

"The question whether a pauper had a legal settlement in Augusta township, by reason of a devise to him of a tract of land in that township. By the last will of Peter Conrad, the father of the pauper, he became seized of a freehold estate in sixty acres of land, lying within Augusta township, which the testator devised in the following words, to wit: 'To my son, George Conrad, I give and devise sixty acres of land in Augusta township, adjoining the sixty acres tract of land I devised to my son, John Conrad, M'Clay's land, and others, to hold to him, his heirs and assigns forever; upon condition, however that the said George, after my decease, becomes a perfectly sober man, and abstains from the use of all intoxicating liquors, of which my executors hereinafter named are to judge. And provided the said George do not become a sober man, and abstain from the use of liquors as aforesaid, then and in that case, it is my will that the said tract of land descend to the wife and children of the said George, in equal shares, in fee simple.' " Kennedy, J.: "It is very plain from the terms of the devise that at the time of making the will George was addicted to the excessive use of strong liquors, and that he was only to have the land therein mentioned upon condition that he became a sober man, and abstained from all further use of such liquors. It is also clear that the condition

³⁵ *Forks v. Easton*, 2 Wharton, 405.

³⁶ *Respublica v. Caernavon*, 2 Yeates, 51.

³⁷ *Commonwealth v. Jennings*, 1 Bro. 197.

here mentioned is a condition precedent, and that the testator did not intend that any estate in the land should vest in George until he complied first with the condition. That such was the intention of the testator is made manifest beyond all possible doubt, for in the event of George failing to comply with the condition, he has given the land over to the wife and children of George in fee, to hold the same as tenants in common. And the executors of the will were thereby appointed to judge of George's having become a sober man, so as to entitle him to claim the estate mentioned in the devise. But according to their evidence, as well as the evidence of other witnesses in the case, it is only too clear that George never has complied with the condition; indeed, it would seem as if he had never even tried to do so, though he has had all the time, and a great deal more than could be asked, for such purpose. But according to the act of assembly, it is not only requisite that he should have become seized of a freehold estate in the land, in order to gain a legal settlement, but that he should also have dwelt upon it for one whole year. Now there is no evidence whatever going to show that he has ever dwelt or resided upon the land at any time. It does not even appear that there is such a thing as a dwelling-house upon it. The most that has been shown of his connection with the land is, that before and at the time of his father's death, he had, by the permission of the father, been in the receipt of at least some portion of the profits of the land, and that after the father's death he continued in the receipt thereof for some time; so that the appellants have failed entirely to establish the second ground of their defence against receiving and providing a support for the pauper." ³⁸

Tenancy by the Curtesy Initiate.

"Tenancy by curtesy initiate is not such a freehold as gives a person a settlement under the poor laws.

³⁸ *Lewisburg v. Augusta*, 2 W. & S. 65.

"The pauper in this case had gained a settlement in Locust township by hiring. Subsequently he married a woman, who was the owner in fee simple of a tract of land in Middlecreek township, Snyder county, and that therefore her husband was seized of an estate of freehold as a tenant by a curtesy initiate, and having dwelt thereon, for upwards of a year, acquired a settlement in the township of Middlecreek subsequent to his hiring in Locust. This contention raised the question, 'Is tenancy by a curtesy initiate in Pennsylvania now a freehold estate within the meaning of the fourth clause of the ninth section of the act of 1836?'

"While this question has been raised in Pennsylvania it has not yet been decided by any of the courts. In *Overseers of Montoursville v. Overseers of Fairfield*, 112 Pa. 99, the question was not determined, as in that case there had not been a dwelling upon the premises for one whole year.

"At common-law, upon the birth of issue, a husband became tenant by the curtesy initiate, and this was said to be a freehold estate, although not consummated until the death of the wife. The reason was that it would become certain by birth of issue, that the husband would be seized during his own life and was entitled to the rents and profits of the property, and had to do homage for it.

"The husband, indeed, becomes seized of a freehold, not his, in so much that both must do homage for it: *Bank v. Stauffer*, 10 Pa. 399, 2 Bl. Com. 126. The reason that he is even seized of is, that her personal existence has entered into his, but with all her personal rights, powers and duties attached to it. For every purpose of personal capacity, except to alien or encumber her land, the law is unable to conceive of husband and wife in respect to property as civil existences; and, representing her person, he not only performs her services, but takes the fruits of them. In contemplation of law, therefore, her person is his person, and her seizin is his seizin. . . .

"The law now conceives husband and wife in respect to

property as civil existences, and the husband no longer performs her services, nor takes the fruits of them. She receives the rents and profits of her lands, and the only right the husband has on or about the premises is his marital right to live with his wife. The reason ceasing, the rule should cease, and even were the birth of issue not dispensed with, the husband would not now become seized of a freehold by the marriage.

“ ‘But after issue born,’ Judge Gibson says, ‘he has a freehold in his own right,’ and gives as the reason therefor that ‘as it has become certain by the birth that the husband will, in any event be seized during his own life, and as further distinction between his seizin and the freehold would be without consequences, he has both by a sort of remitter.’ *Bank v. Stauffer*, 10 Pa. 399.

“Although the birth of issue is dispensed with, it is not now certain that the husband will in any event be seized during his own life, but on the contrary, it is certain that he will not be seized during the life of the wife, and there is a wide distinction between her seizin and the consequent receipt of the rents and profits by her and his freehold consummated by her death, and the receipts of the rents and profits by him after that event. Had there been consequences at common law, it would never have been held that the husband had both seizin and freehold before the death of the wife by a sort of remitter.

“The incidents of the common-law estate by the curtesy have been so thoroughly removed by legislation that the estate itself, as an interest effectually vested during the life of the wife, can be no longer said to exist. . . . And such, indeed, seems to be the judicial understanding of its present character in Pennsylvania, *i. e.*, as a statutory interest, inchoate and imperfect merely during the life of the wife, to become fixed and vested only upon her decease, in accordance with the law as it may therefor avail, and standing upon no higher plane of constitutional protection than the dower

itself of the wife in the real estate of her husband: Enal. & Rich, pages 65 and 67, citing *Heill v. Goodman*, 1 Woodward Decision, 207; *Gamble's Est.*, 1 Parson's Equity Case, 489, and *Morningner v. Ritner*, 104 Pa. 298. In *Morningner v. Ritner*, it is said that 'Ritner's right to curtesy in his wife's estate was no part of the marriage contract, but it resulted from the operation of statutory enactment existing at the time of her death. This point was expressly ruled in reference to the wife's dower: *Melizet's Ap.*, 17 Pa. 449, and we take it for granted that no one will insist that the right of curtesy is superior to that of dower.'

"While it has been decided in *Harris v. New York Mutual Ins. Company*, 50 Pa. 341, that the husband as tenant by the curtesy of real estate of his wife, has an insurable interest therein, still he has not, as decided in *Morningner v. Ritner*, such a vested interest before the death of the wife as to be constitutionally protected. We are accordingly of the opinion that tenancy by the curtesy, before consummation by the death of the wife, can no longer be said to be a freehold estate, within the meaning of the poor law for the purpose of gaining a settlement, which is based upon the assumption that the freeholder has by the payment of taxes, etc., been of some benefit to the district."³⁹

Tenant by the Curtesy.

"In a proceeding by one poor district against another to recover money expended in the care of a pauper, where the petition states that the pauper's wife was possessed of an estate in fee simple in the respondent poor district, and that the husband resided thereon with his family, and thereby gained a settlement in said district, it is obvious that the petitioners mean that the settlement was gained because the pauper was a tenant by the curtesy initiate of his wife's land, or that

³⁹ *Overseers of Penn Township v. Overseers of Locust Township*, 14 Pa. C. C. R. 162.

he had a statutory interest under the act of 1855, and it is in substance an averment of citizenship. If he had no such estate because of alienage, it was incumbent upon the respondents to so aver in their answer; and if they do not do so, the court is warranted in assuming the pauper's citizenship without passing upon the question as to whether, as a general rule, it will be presumed or must be made affirmatively to appear.

An estate by the curtesy has not been annihilated by the statutes of April 11, 1848, P. L. 536, Section 10; April 22, 1850, P. L. 553, Section 20; May 4, 1855, P. L. 430; April 1, 1863, P. L. 212, and April 3, 1887, P. L. 332; nor by the decisions interpreting them; but it still exists as a freehold estate in the husband, incapable of divestiture during the wife's life, except by joint deed of the husband and wife. When the unity of person is ended by the wife's death, then the estate becomes consummate in the husband, only because his control of it is no longer hampered by provisions necessary to the wife's enjoyment of her estate.

"Nor does the estate as argued by appellee stand upon the same plane as the wife's inchoate right of dower; the husband, in a degree, has the present enjoyment of the initiate estate, during the life of the wife, which cannot divest by her deed or mortgage; either, if not joined in by the husband, is an absolute nullity; so that, by no deed of her estate, or mortgage pledge thereof, can she defeat his during her life, or peril his possession. On the other hand, his deed to a purchaser of his own land will support ejectment, and dispossess both during his life; his mortgage sued out to judgment and sale, will divest her dower so as to bar any claim by her after his death. Hence, the right of dower and estate by the curtesy are not of the same nature, and are clearly not of the same value.

"We are, therefore, of the opinion that by the terms of the act of 1836, which declare that a settlement may be gained in any poor district: 'By any person who shall become seized

of any freehold estate within such district, and shall dwell upon the same for one whole year,' Wheeler, the pauper, gained a settlement in the poor district of McKean county; and as he gained none in New York or elsewhere, after he left McKean county, his last legal settlement was the poor district of that county; consequently, the burden of his support legally falls upon that district." ⁴⁰

Freehold Estate of Wife in Remainder.

"A pauper was born and reared in Plunkett's Creek township, and lived there until within a few years. That he had a legal settlement in said township cannot be questioned. That he acquired none in any other district, unless he did so in Cascade township, is also perfectly clear. Did he acquire a settlement in Cascade township? If so, he acquired it by virtue of his marriage with Mary, his wife, who, it is claimed, owned and possessed a freehold estate in Cascade township. Her father owned a small piece of land worth about \$200 or \$300 in said township, and died in 1875, having first made a last will and testament, by which he devised this piece of land to his wife during the term of her natural life, and then and immediately after her decease to his children and heirs-at-law, share and share alike, their heirs and assigns forever. The wife of the pauper is one of the children and heirs of said testator, and also claimed to have purchased one of the interests of the other heirs. On December 5, 1894, the pauper married said Mary, who had previously been divorced from a prior husband, with whom she had lived in Colorado for some years. From the time of their marriage until July, 1895, when this order of removal was taken out, they appear to have lived on this piece of land. If it was conceded that said Mary had a freehold interest in said land, her husband could not have ac-

⁴⁰ Comrs. of the Rouse Estate v. Poor Directors of McKean County, 169 Pa. 116.

quired a settlement by virtue thereof, for he did not dwell upon the same for one whole year. She was, however, not seized of an estate of freehold such as is contemplated by the act. She had, it is true, a freehold in remainder, but the life-estate being in the mother, how could the daughter be said to be seized of said estate, while the mother, the life tenant, was still alive? She had no right to the possession, and neither could her husband have any right thereto. It is entirely different from the case of the *Commissioners v. Poor District of McKean County*, 169 Pa. 116, cited by appellant. In that case she was actually seized and in possession of a freehold estate, and dwelt with her husband upon the same for about two years after marriage. In the case before us the wife only dwelt with her husband on the property a little over six months, and that, too, before either had any right to the possession of the property. In fact, they were mere squatters, or lived there under some arrangement with the mother. In view of these facts, and the well settled law that upon marriage the wife acquires the settlement of her husband, and the husband's place of settlement being in the township of Plunkett's Creek, the order of removal in this case must be confirmed."⁴¹

By an Unmarried Person not Having a Child, Etc.

Clause V. By any unmarried person not having a child, who shall be lawfully bound or hired as a servant within such district, and shall continue in such service during one whole year.

Service Must be for a Year.

"Under this clause of the poor laws, an unmarried woman not having a child will not gain a settlement by service without a hiring under a contract, express or implied. The clause provides that a settlement shall be gained by any un-

⁴¹ *Cascade Township v. Plunkett's Creek Township*, 17 Pa. C. C. R. 450.

married person not having a child, who shall be lawfully bound or hired as a servant within such district, and shall continue in such service, as a servant, during one whole year.'

"This part of our law is substantially the same as the English enactment, 3 W. & M. C. 11, Section 7 (3 Burn's Just., 12th ed. 344). In England, with respect to the hiring in conformity to the nature and object of the act, the courts have been critical and exact. They hold that a person who was hired for half a year, did not gain a settlement: 2 Salk. 535. It must be an entire contract; thus where a person was hired from May-day to Lady-day, and from Lady-day to May-day, and so on in like manner, he was held not to have gained a settlement. The hiring must be for a year: Foly, 141; 3 Burn's Just. 347.

"But we are more liberal in our construction of the statute, and hold it not necessary that there should have been a contract for a service for a year to gain a settlement; but if there has been a service for a year under one or more contracts, it is sufficient: *Heidelberg v. Lynn*, 5 Wh. 430. But there must be an agreement of hiring in Pennsylvania. . . . Service alone, without hiring, will not gain a settlement. In *Rex v. Weyhill*, *Burrows' Settlement Cases*, No. 157, there was a service for six years, and no settlement was gained. Mere taking one in charity will not gain a settlement." ⁴²

Settlement by Unmarried Person not Having a Child.

"The contention in this case involves the construction of Clause 5 of Section 9, of the act of 1836, prescribing the manner in which any 'unmarried person not having a child,' may gain a settlement in any district, viz.: That he or she shall be lawfully bound or hired as a servant, within such district, and shall continue in such service during one whole year.

"The sixteenth section of the same act provides that, 'on

⁴² *Lewistown v. Granville*, 5 Pa. 283.

complaint made by the overseers of any district to one of the magistrates of the same county, it shall be lawful for said magistrate, with any other magistrate of the county, where any person has or is likely to become chargeable to such district into which he shall come, by their warrant or order, directed to such overseers, to remove such person, at the expense of the district, to the city, district or place where he was last legally settled, whether in or out of Pennsylvania.' Pursuant to these provisions, the overseers of Bellefonte borough—alleging that James McFadden, the poor person in question, was last legally settled in Somerset county poor district—on April 16, 1892, obtained an order to remove him to that district, and nine days thereafter the overseers of Somerset, by leave of the court below, appealed from said order of removal.

"At the hearing it was conclusively shown and virtually conceded that McFadden, 'an unmarried person, not having a child,' had acquired a legal settlement in Somerset county by having served therein, from the spring of 1884 to the fall of 1885, in pursuance of a hiring with Messrs. Collins and Shoemaker; but it was contended by the overseers of said district that he subsequently gained a settlement in another poor district by hiring as a servant therein and continuing 'in such service during one whole year,' as required by Clause 5, above quoted. They thus assumed the burden of proof and introduced testimony from which the court was fully warranted in finding facts establishing a subsequent legal settlement in another poor district, and consequently the order of removal was rightly quashed."⁴³

Hiring not Necessary, but Only Service for One Year.

"As our system of poor laws had its origin in that of England, and as many of her statutory provisions were re-enacted

⁴³ Overseers of the Borough of Bellefonte v. Somerset County Poor District, 168 Pa. 286.

here, we must turn to some of them to have a view of the whole ground in contest. By the 3 and 4 W. & M., C. 11, 'If any unmarried person, not having a child or children, shall be lawfully hired into any parish or town for one year, such service shall be judged a good settlement therein.' The insufficiency of this was that it went no further than the 5 Eliz., C. 4, which also prohibited a retainer for less than a year; and the insolence of servants, it is said in *Dunsfold v. Ridgwick*, 2 Salk. 535, gaining a settlement, as they did by the 12 Car. 2, led the way to the 8 and 9 W. 3, C. 30, by which it was enacted that no person so hired as aforesaid shall be judged or deemed to have a good settlement in any parish or township unless such person shall continue or abide in the same service during the space of a whole year.' Hence it became indispensable to a settlement that there should have been both a hiring and service for a year. Our law seems to consider service alone as a meritorious cause, and to require that there should have been a contract for it, only as a proof that it was valuable and distinguishable, in that respect, from those feeble and trifling acts which are sometimes performed in requital of gratuitous maintenance; in other words, to show that, instead of having been a benefit to the township as a producer, the pauper had been a burthen to it as a consumer, from the beginning. In the ninth section of the statute of 1836, it is enacted, that a settlement may be gained 'by any unmarried person, not having a child, who shall be lawfully bound or hired as a servant within such district, and shall continue in such service during a year.' It is scarcely necessary to remark on this, that the time is predicated of the service, and not of the contract; and consequently that what is required seems to be no more than a continuance in hired service during the period. It is therefore enough for the purpose that the pauper has been in uninterrupted employment, whether under one contract or any number of contracts. Now the reason why service under a hiring to do job or piece work, gains no settlement by the British statutes,

is not that the service, but that the contract, does not come up to the exigence; and *The King v. The Inhabitants of St. Peter's in Dorchester*, 2 Bott's Poor Laws, 197, was decided expressly on that ground. But though the contract need not be continuous, yet where there is an apparent gap in the service by temporary cessation from active duty, the terms of the living may be consulted to ascertain whether the pauper was not in the constructive service of an employer; and on such an inquiry decisions on the 8 and 9 W. 3 may afford very valuable assistance. The leading principle of these is, that temporary absence from actual service, if it discharge not the contract, breaks not the relation of master and servant, it being sufficient that the pauper did all that was required of him."⁴⁴

The same was held to be the law under the sixteenth section of the act of March 29, 1803, where it was provided that a person "hiring as a servant and continuing and abiding in such service for a year," in a township, gains a legal settlement there. It was not necessary by that act, as it was by the English statutes of 3 W. & M., Chap. 11, and 8 and 9 William 3d, Chap. 30, that the hiring, but only that the service should be for a year.⁴⁵

Only Service for One Year is Required, not Residence.

"From February, 1888, until September, 1889, McFadden, a pauper, was hired by the Bellefonte Furnace Company, owner of a large furnace in Spring township, Centre county, adjoining the borough of Bellefonte, and during that period continued in the service of said company, in said township, under the same contract of hiring; that while said service was thus being performed in Spring township, McFadden boarded and lodged with his mother in the borough of Bellefonte, paying his boarding to her as he would have done to

⁴⁴ *Hydelberg v. Lynn*, 5 Wh. 432.

⁴⁵ *Overseers of Byberry v. Directors of Oxford and Lower Dublin*, 2 Ash. 9.

a stranger. These findings of fact were fully warranted by the testimony, and not being excepted to, must be accepted as conclusively established. We thus have a contract of hiring for services in Spring township, by an 'unmarried person not having a child,' and his continuance 'in such service for one whole year,' thus fulfilling, in both letter and spirit, every requirement of the clause above quoted.

There is no merit in the suggestion that there must be both residence and service in the same district. While in other clauses of the ninth section of the act residence in the district is made a condition of gaining a legal settlement therein, Clause 5, under consideration contains—as we have seen—no such requirement. The construction suggested would require us to read into the clause something that is neither there nor ever intended to be there.

"While, upon the established facts of the case, the learned judge was mistaken in locating McFadden's subsequently acquired settlement in Bellefonte, instead of in Spring township, he was nevertheless clearly right in his general conclusion that the order of removal should be quashed on the sole ground that Somerset poor district was not his last place of legal settlement. The sole controlling fact was that he had gained a legal settlement in another poor district after he had left Somerset county. That definitely determines the only issue between the two parties then and now in court. To that issue, the overseers of Spring township were not parties, and of course cannot be affected by the decree herein."⁴⁶

Must be an Agreement to Pay Wages, Which can be Enforced.

"The hiring of a servant, by which a pauper may gain a settlement under this clause, must be under such an agreement to pay wages or bargain as could be enforced in a suit at law."⁴⁷

⁴⁶ *Bellefonte v. Somerset Co.*, 168 Pa. 286.

⁴⁷ *Penn's Creek v. South Bend*, 1 Pennypacker, 408.

Employment Need not be Menial.

"It was claimed that a pauper gained a settlement in Huston township by having hired as a servant and continued in such service therein during one whole year under the fifth clause of Section 9 of the act of 1836.

"The pauper testified, 'I was not hired during March and April of either 1892 or 1893.'

"From this testimony the court found the fact that the pauper did not continue to work in Huston township during any one whole year, as contemplated by the act of assembly. The fact that while the work was in progress at the (logging) camp, he was off duty at times, visiting his friends, or for other reasons, did not work continuously, would not have the effect of breaking the continuity of the service, as the hiring continued and the absence was but temporary, and with the leave of his employer: *Heidelberg v. Lynn*, 5 Wh. 430; *Byberry v. Oxford*, 2 Ash. 9.

"We are also of the opinion the character of the employment and services rendered was such as the act contemplates, and that it was not necessary, as claimed by the defendants, that it be menial service or rendered in the performance of household duties.

"But the evidence shows that neither the hiring nor the service continued during the term of any one year. During the months of March and April in both 1892 and 1893 (the years in which it is claimed the services constituting the settlement were rendered), the pauper was neither hired nor did he work. During these months he boarded himself and, so far as the question of settlement is concerned, might as well have done it elsewhere as at the log camp. The logging year ended with February and commenced with May, and each year before going to work a new contract of hiring was made with him. It is not necessary that the hiring be for a year, but the services must be, and the criterion to judge whether absence from service breaks its continuity and prevents its being a whole year's service as contemplated by the

act, is whether during the intervals of absence the contract of hiring continued: *Heidelberg v. Lynn*, 5 Wh. 430; *Moreland v. Davidson*, 71 Pa. 371.

"It therefore follows that the work done by the pauper in Huston township did not have the effect of making that township his place of settlement, and that the appeal must be sustained and the order of removal quashed."⁴⁸

Service With an Assignee is Service With the Master.

"No formal stipulation is necessary. The language of the old law was 'serve his master,' which gave rise to the Overseers of Reading *v. Cumru*, 5 Binney, 81, in which it was held that the service with an assignee of an indented servant, was a service with the master, although the assignment may be void, for want of assent of a justice."⁴⁹

Must be Employed as Servant.

"It is necessary that she be employed as a servant. In the case in hand, there is no doubt the pauper lived with Isaac McGrandy a year in Johnsonburg. But the evidence shows that she lived with McGrandy, not as a servant, but as his wife. When McGrandy and the pauper came to Johnsonburg, they represented themselves to their landlord as husband and wife. They moved into the house which he leased, and the evidence shows they had but one bed in the house. They joined a lodge there, known as the Sons of Temperance, and were known in said lodge as Mr. and Mrs. McGrandy. She received relief as Mrs. McGrandy, and generally was reputed and known as the wife of Isaac McGrandy. That they cohabitated as husband and wife is fairly to be inferred from the fact that they had but one bed in the house. The relation they assumed is entirely inconsistent with the relation of master and servant. There is no reliable testimony in the

⁴⁸ *Bradford v. Huston*, 15 Pa. C. C. R. 323.

⁴⁹ *Tioga v. Lawrence*, 2 Watts, 43.

case showing an employment of the pauper except the testimony of Isaac McGrandy. In view of the fact that his testimony is entirely inconsistent with the relation assumed by him to exist between him and the pauper, and in view of the fact that he is impeached, and all the circumstances proven in the case rebut the presumption that he had employed the pauper as a servant we can place no reliance whatever on his testimony.

"We cannot, under the evidence in this case, find, as a fact, that the pauper was hired as a servant by McGrandy in Johnsonburg, and that she continued in his service by virtue of any hiring for the period of one year. We must find as a fact that she lived with him during the period of his residence in Johnsonburg, not as a servant, but in the same manner as if she were his wife. And that no settlement could be gained by reason of such fact." ⁵⁰

There Must be Proof of Hiring.

"It must be conceded the law requires proof of a hiring, in which is implied a contract, and the question arises whether this may be shown by the admissions of the parties thereto. It seems to be decided that such mere admissions or declarations, made after the termination of the service, would not be competent: *West Buffalo v. Walker*, 7 W. 171. But it is a general principle that declarations which are the immediate accompaniments of an act are admissible as part of the *res gestæ*, and so the declarations of the parties, made during the time when one has been in the service of the other, have been admitted for the purpose of illustrating the character of the service, whether gratuitous or otherwise: *Tioga v. Lawrence*, 2 W. 43; *Moreland v. Davidson*, 71 Pa. 371. It would seem that the testimony of Mr. Harvey and Mr. Monroe, as to the declarations of the party during the time Bonham was at Vanhorn's, taken together with the other acts

⁵⁰ *Loyalsock v. Johnsonburg Borough*, 14 Pa. C. C. R. 323.

of the parties, would be admissible to rebut any inference that the service was gratuitous, and thus to show that there was an actual hiring. It is suggested that no settlement was gained because the Vanhorns ordered Bonham away. This is not conclusive, and was expressly decided on a similar state of facts: *Briar Creek v. Mount Pleasant*, 8 W. 431. Mr. Justice Sergeant says: 'The hiring virtually endured for three years, notwithstanding occasional orders to go. . . . The hiring in the first instance may be indefinite—at the will of the parties; and if neither determine his will, but both continue the hiring, and act under it for a year, the letter and spirit of the act are complied with.' "⁵¹

Service Without Hiring Will not Gain Settlement.

"Service alone, without hiring, will not gain a settlement. . . . Mere taking one in charity will not gain a settlement, and the evidence as to the terms upon which the alleged pauper hired at proves nothing more: *Lewistown v. Granville*, 5 Pa. 283.

"The distinction between the service at Henderson Monroe's and that at John Meixell's is apparent. In the former case there was no contract of hiring, express or implied, while in the latter case there was an express agreement that the pauper should receive his victuals and clothes for his labor. This constituted a contract, for the breach of which the servant might have had his remedy by action. It was expressly decided in *Briar Creek Township v. Mount Pleasant Township*, 8 W. 431, that service rendered under such a contract was sufficient to gain a settlement. It was there said: 'To constitute a hiring it is not necessary that the consideration should be paid in money, it is sufficient if other valuable commodities are to be paid.' The service at Mr. Meixell's under this arrangement having continued for more than a year, we feel bound to conclude that a settlement was thereby

⁵¹ *Huntington v. Fairmount*, 2 Luz. Leg. Reg. 445.

gained in Fairmount township after Bonham had abandoned his domicile in Huntington.

"If the value of the services rendered were the only test, we should have no hesitation in concluding from the testimony that the settlement alleged to have been gained in Ross township was more meritorious than that gained in Fairmount. It is true that Mr. Vanhorn was a nephew, but he was under no legal obligation to contribute to Bonham's support. Further, the latter was well able to work, and was by no means an object of charity. The period at Vanhorn's extended over a large number of years, from 1856 or 1857 to 1874, and while it appears that Bonham was indolent, and was away at times, yet these periods were inconsiderable in length, and not sufficient to break the continuity of the service, and the work that he did was of a substantial and valuable character. These circumstances go very far to rebut the inference that the service was gratuitous." ⁵²

Serving for Charity.

"Where the pauper went to live with his uncle for an indeterminate period of service, and the latter took him into his family partly from benevolent motives, expecting to take care of him, and in return receiving the benefit of his labor, it was not sufficient to give him a settlement." ⁵³

Consideration Need not be Paid in Money.

"To constitute a hiring, the consideration need not be paid in money, any valuable compensation, as victuals and clothing is enough." ⁵⁴

Share in Profits is not Hiring.

"A contract that one shall provide a shop, loom and tackle, and the other perform the labor of weaving, and that each

⁵² *Huntington v. Fairmount*, 2 Luz. Leg. Reg. 445.

⁵³ *Ib.* ⁵⁴ *Briar Creek v. Mount Pleasant*, 8 Watts, 431.

shall receive one-half of the profits, constitutes a partnership, and not a hiring within the statute." ⁵⁵

Occasional Absence.

"It is not necessary that there should have been a contract for service for a year to gain a settlement; it is sufficient if there have been a service for a year under one or more contracts.

"An occasional leave of absence to visit relatives allowed a domestic servant, hired for an indefinite time, at weekly wages, does not necessarily break the continuity of service extending over a period of three or four years in the same family so as to prevent her from acquiring a settlement." ⁵⁶

Continuity of Contract.

A settlement is gained by an unmarried person by reason of a hiring and service for one whole year, and it may be under one or more contracts. The consideration need not be paid in money. It is sufficient if it be paid in victuals and clothing.

Barnett, P. J.: "The facts in this case are quite different from the facts in *Plum Creek v. South Bend*, 1 Pennypacker, 408. In that case Daniel Rupert testified that he never had a bargain with the pauper to keep him. He never hired him. That he only kept him to keep him off the township, as long as he could attend to him. When I found I could not attend to him I sent him home. We clothed him and kept him as one of our own family. The witness was the uncle of the pauper, and his testimony was corroborated by all the other evidence in the case. In *Briar Creek v. Mount Pleasant*, 8 W. 431, it was said by Sergeant, J.: 'The evidence in the present case shows that the pauper continued in the service of Mr. and Mrs. Oman in Mount Pleasant township for upwards of three years, and the only question is whether during

⁵⁵ *Gregg v. Half-Moon*, 2 Watts, 342.

⁵⁶ *Shickshinny v. Montour*, 6 Luz. Leg. Reg. 173.

that time she was hired as a servant. Of this we think there can be no doubt. The evidence shows she was hired by an express agreement. To constitute a hiring it is not necessary that the consideration should be paid in money. It is sufficient if other valuable commodities are to be paid. Here it appears her labor was not to be gratuitous, but was to be paid for in victuals and clothing, whatever she earned. This constituted a contract for the breach of which the servant might have had her remedy by action. A settlement is gained by service, but in pursuance of contract of hiring, which is binding on both parties. To constitute such a contract any declaration or acts of the parties which evince their assent to an agreement expressed at the time, is sufficient. A precise and formal stipulation being unnecessary: *Tioga v. Lawrence*, 2 Watts, 44.

"It appears also from the evidence of the pauper, not materially contradicted by the other evidence, that his absence for about a week on a visit was not an interval between two independent hirings, but by permission and under one continuous contract, and 'temporary absence from actual service, if it discharge not the contract, breaks not the relation of master and servant. It being sufficient that the pauper did all that was required of him:' *Heidelberg v. Lynn*, 5 Wh. 430. The pauper says: 'After my time to work by the month was over, I was to tend to the stock for my boarding.' etc. 'I stayed with John Seiber from February, 1887, until April 1, 1888, under this bargain. Mr. Seiber did not object to my going to see my mother,' etc., and he says the visit to his mother while he lived with David Seiber 'was made while I was working for my board.' John Seiber says: 'Whether I made him an offer to come back and work for his board I cannot say.'

"We therefore find as a fact that the pauper was lawfully hired as a servant in Fermanagh township, and continued in such service from February, 1887, to April, 1888, more than one whole year. But if there was a service for a year under

one or more contracts, it is sufficient: *Ib.*; *Lewistown v. Granville*, 5 Pa. 284. And we find (2) that there was a hiring with David Seiber in Fermanagh township immediately after the termination of the hiring with John Seiber. And (3) that William Leckington hired with John Seiber and David Seiber, and by virtue of said two contracts of hiring continued in their service without interruption for more than one whole year.

"We further find that the pauper being an unmarried person by reason of a hiring and service for more than one whole year with John Seiber in Fermanagh township, gained a settlement in Fermanagh township. And also that by reason of a hiring and service with John Seiber and David Seiber for more than one whole year, he gained a settlement in Fermanagh township." 57

"From the spring of 1860 to the year 1868 Barbara Stees was in the service of John M. Taylor in Mifflinburg as a domestic under a contract for hire. She was, however, absent at one time, several months at her sister's (Mrs. Bolander's), at another time at Mrs. Shriner's (another sister) for several months, and made a number of visits to Samuel Stees for a day or two. She went away without the knowledge or consent of Taylor, and he did not pay her for the weeks she was absent.

"There was not a whole year during the period from 1860 to 1868 Barbara lived with Taylor that she did not go away and stay a day or two. This happened every month or two. She went without Taylor's consent, but he always received her when she returned, and the service and payment went on as before.

"Barbara was self-supporting until she left Taylor's. After that she was supported by her trustee under the provisions of her father's will until the fund was exhausted in 1888, when she became a charge on Buffalo township.

" *Fayette Township v. Fermanagh*, 11 Pa. C. C. R. 70.

"With the above findings of facts it would seem that the settlement of the pauper is not difficult of solution.

"It is contended, however, by counsel for Mifflinburg, that by reason of her mental incapacity Barbara could not acquire a settlement otherwise than by derivation from her father; and further, that there was but hiring by the week, and that Barbara did not continue in the service of Taylor for one whole year, as is required by Section 9, Act of 1836. While eccentric and irritable, obstinate and spiteful, she had sufficient mental calibre to make and execute a contract for hire as a domestic servant. This is conclusive of the first contention, and we think the last is without foundation in law.

"Under our statute it is not necessary that the contract for hire be for a year. The essential element is the continuance in service for one whole year, and this may be under one or more contracts: *Heidelberg v. Lynn*, supra; *Lewistown v. Granville*, 5 Pa. 283.

"That Barbara was away a day or two every month or so without the consent of her master did not terminate the service or prevent her acquiring a settlement in Mifflinburg, where the services were rendered. His taking her again under the same contract, paying her the same wages, purged the absence. In *Beeles & Lewistoff*, 3 Burn's Just. 447, where a man was hired as a blacksmith, and allowed by his master to work for another, the blacksmith getting the benefit of it and the master deducting by his consent the proportion of his wages for the time he was away, the court say: 'Service by the master's consent with another person is service of the master. But in this case, if it had been without the master's consent, yet the absence had been dispensed with by the master's taking him again.' The order of the sessions that no settlement was gained was quashed.

"A person hired for a year with leave of absence for a day tarried three, then returned and the master took him into his service as before. It was objected that his staying without leave was a desertion of the service, and the time he stayed

away takes so much off from a complete service for a year. But, by the court, 'This will not prevent a settlement, for the master's taking him again is a purgation of the offense, and no interruption of his service:' *Rex v. Islip*, 1 Strange, 423; 3 Burn's Just. 448. See also *Hamburg v. Fordsburg*, 3 Burn's Just. 448. 'There is no necessity for an actual service upon every day of the year. The master can always dispense with it. He can give leave of absence. Nay, if the servant is absent without leave, in the middle of his year, such absence may be purged, as it has been termed, by the master receiving him again; that is, the subsequent consent of the master ratifies the action done:' Lord Mansfield in *St. Margaret's Westminster and Richmond Burrows*; see *Cross*, 780; 3 Burn's, 455.

"We are accordingly of the opinion that there was a contract for hire as a servant and a continuance in such service for one whole year within the meaning of the statute. It follows that a settlement was gained by Barbara in *Mifflinburg*, and that the order of removal must be confirmed." ⁵⁸

Implied Contract of Hiring.

"If one is no relative and not an object of charity, but able to earn wages, is proved to have been employed in the service of another for a year or any other period of time, the law implies a promise to pay on the implication of a contract. Certainly this presumption of a contract will stand until rebutted by facts to the contrary. But we are not without authority on this point. In *Heidelberg v. Lynn*, 5 Wh. 430, Chief Justice Gibson says: 'Our law seems to consider service as the meritorious cause, and to require that there should have been a contract for it only as proof that it was valuable and distinguished in that respect from those feeble and trifling acts which are sometimes performed in requital of a gratuitous maintenance.' " ⁵⁹

⁵⁸ *Buffalo Township v. Mifflinburg Borough*, 168 Pa. 445.

⁵⁹ *Moreland v. Davidson*, 71 Pa. 377.

Parent Working for Children Raises no Implied Contract for Hire.

"A pauper became a charge on the borough of Jersey Shore in July, 1890, and since that time had been maintained by said borough. In August, 1894, an order of removal was obtained by the overseers of said borough to remove said pauper to the poor district of Nippenose township, which was duly served on the overseers of the last mentioned district. By reason of the insanity of the pauper and her confinement in the asylum at Danville, she could not be removed, and from this order of removal Nippenose township appealed.

"The question to be determined is whether Nippenose township is the place of her last legal settlement. The pauper and her husband at the time of his death resided in Nippenose township, and had a legal settlement there, and the latter was a charge on said township. The pauper being the wife, must, therefore, continue to have a settlement in said township, unless she has acquired one in her own right elsewhere since then. It cannot be contended that she acquired such settlement, unless she did so in the borough of Jersey Shore. It is alleged on the part of Nippenose township that she gained a settlement in said borough by being hired and keeping house for her sons, with whom she lived in said borough for over a year from the spring of 1888. One of these sons was at this time a minor, but it was claimed was emancipated and had been so emancipated for some years. . . . No express contract for such hiring and service has been proven, and the relation of the parties is such as to raise no implied contract. It is true that they furnished her with victuals and clothing, and she did housework. It is evident, however, from all the testimony in the case that she was there in the capacity of a parent, for whom it was the duty of the children to provide, and not in the capacity of a servant. The idea was to give her a home with her children, and while they may have intended that she should do

the housework for her keeping, there is no sufficient evidence of any express contract with her to warrant us in finding that she was hired as a servant. There is nothing to justify the conclusion that the relation of the parties was changed from that of parent and child to that of master and servant. As between parent and child the presumption is against such a change in the relation of the parties, yet it is clear that unless she was hired as a servant, no length of service could give her a settlement. Under the law as applicable to the facts in this case, we feel compelled to say that she acquired no settlement in the borough of Jersey Shore by hiring and service for the period of one year, as required by the act of assembly.”⁶⁰

Hiring by an Idiot.

“It does not seem to be necessary to decide under what circumstances in all cases, an idiot may acquire a settlement by hiring. Cases may occur in which there will be difficulty. The pauper in this case had a settlement in Upper Milford. This is admitted. But it is said she afterwards acquired a settlement in Lower Macungie by living with Grandinowski more than a year, and that he gave her her victuals and clothes for her labor. If we admit that this gave her a settlement, we next find her more than a year in Upper Milford, at Breinig’s, and here again she receives food and clothing for her services. This brings her settlement again to Milford. There is no pretense of any hiring after this. She went to Shuler’s because she had no place at which to stay; he received her, either from charity, or from a promise of partial compensation from her sister. He wished her to go away. She had no place to which to go, until she was delivered to the overseers on his declining longer to keep her. That she was in Lower Macungie when relief was first neces-

⁶⁰ *Jersey Shore v. Nippenose*, 18 Pa. C. C. R. 473

sary might be a reason for present relief. The place of residence is found, and to that she must be sent." ⁶¹

Hiring by Married Woman Deserted by Husband.

"It was earnestly argued that admitting a married woman might gain a settlement under certain circumstances in her own right, in some of the modes designated by the act of 1836; she could not do so by hiring and service. That the act explicitly provides that a settlement may be gained by any unmarried person not having a child, who shall be lawfully bound or hired as a servant within such district and shall continue in such service during one whole year, and therefore the case of *Parker v. Du Bois*, 20 W. N. C. 81, does not rule this case, that being a settlement acquired by a case of property and payment of rent, etc., which under the provisions of the act could be done by any person.

"It is true that the clause of the act of 1836, under which the pauper in this case is claimed to have acquired a settlement, is restricted to an unmarried person not having a child, and therefore she is not within the letter of the act. But it seems to us that she is within the spirit of the act, and if it were clearly established that she had been hired and rendered service by virtue of such hiring for the period of one year, we would feel inclined to decide that she had acquired a settlement in her own right. Having all the rights of a *feme sole* trader, which includes the right to acquire property and hold her separate earnings and make binding contracts for her benefit, she is, so far as these matters are concerned, in the same position as if she were a widow, or had never been married. If then, as in this case, she is without a child, it seems to us to be our duty to ignore the existence of the husband and treat her as regards her right to acquire a settlement as an unmarried person.

⁶¹ *Upper Milford v. Lower Macungie*, 3 Wh. 74.

"But unfortunately for the case of the appellee, the evidence in this case does not satisfy us that the pauper had been hired as a servant within the poor jurisdiction of Johnsonburg, and has continued in such service by virtue of the hiring for the period of one year. There must be both a hiring and service to gain a settlement: *Lewistown v. Granville*, 5 Pa. 283. A contract for hiring and a promise to pay may be implied where one is employed in the service of another for any period of time, who is not a relation, and not an object of charity, but able to earn wages: *Moreland Township v. Davidson Township*, 71 Pa. 371." ⁶²

Hiring by Unmarried Woman With Bastard Child.

"The pauper, Catharine A. Snyder, twenty-five years of age, unmarried, had an illegitimate child born in 1881, which still survives. She hired with one Emanuel Strouse, in Lewisburg borough, in November, 1883, at \$1.50 per week, and remained in his service until January, 1885, more than one whole year. Strouse paid her the wages regularly, part of which she used in the maintenance of the illegitimate child born in 1881. This child was not with the pauper while she was at service in Lewisburg, but was maintained by her at the house of John Young, who resided in another district.

In November, 1885, the pauper gave birth to another illegitimate child in the township of Buffalo, in the county of Union.

"The pauper having become chargeable in Lewisburg, the overseers of the poor, on February 5, A. D. 1885, procured an order and removed her to the township of Buffalo, from which order Buffalo appealed.

"The question for adjudication is whether an unmarried woman, having a bastard child, can acquire a settlement by hiring and service.

"Section 9, act of June 16, 1836, declares that a settlement

⁶² *Loyalsock Township v. Johnsonburg Borough*, 14 Pa. C. C. R. 323.

may be gained 'by any unmarried person not having a child, who shall be lawfully bound or hired as a servant within such district, and shall continue in such service during one whole year.' Does the expression 'child' in the statute mean an illegitimate child, or a legitimate child only? The point seems never to have been decided squarely in this state, and, in the absence of authority, we must look into the English cases.

"By Section 9, 3 W. & M., Burn's Justice, 26th edition, page 318, it was enacted that 'if any unmarried person, not having a child or children, shall be lawfully hired into any parish or town for one year, which service shall be adjudged and deemed a good settlement therein.' Our statute is evidently taken from this one: 5 Pa. 284. The object of the enactment was to prevent all persons from acquiring a settlement under its provisions, save the unmarried person who hired and did the service. It is clear that neither a widow nor a widower, with a lawful child or children, can acquire a settlement by hiring and service, unless, indeed, the child or children had acquired a settlement in their own right. In such case the father or mother might, by hiring and service, acquire a settlement for themselves, the reason being that, although they may have a child or children, yet they, having settlements of their own, could derive no settlement from the parents, and the object of the statute in declaring that an unmarried person, not having a child or children, shall have a settlement, being to prevent an undue burden being cast on the township or district, the requirements of the statute would be satisfied. This was distinctly held in *Anthony v. Cardigan*, 2 Bott, 177; 4 Burn's Justice, 320. There the pauper was a widower, and had a daughter, who was married and settled elsewhere, and he hired and served for one year in the district, and it was decided that he gained a settlement; that he was a single person within the meaning of the act, though not expressly within the letter of it. 'The meaning of the statute is, that he might not bring any conse-

quential damages to the parish, which he could not possibly do here.' So in 10 East, 88, it was held that a widower who had an emancipated child could acquire a settlement by hiring and service. There is no doubt the bastard of a certificate man is settled at the place of his birth, for he is not such issue as will follow the settlement of his father and mother, neither is he, his or her child, within the intention of the statute so as to be sent back with the parents: *New Windsor and White Waltman*, 1 Strange, 186; 2 Bott, 577; *Burn's Justice*, 284. In *Hilton v. Leidlinch*, 2 Strange, 1168; *Burr*. S. C. 187; 2 Bott, 13, the question was whether a bastard was included under the words, family or children. The court said: 'And we take it he is not; for the law takes no notice of bastard children; they are *filli nullius, filli populi*.' It was agreed that the word children meant legitimate only: *Burr*, Settlement Cases, 190. In *Rex v. Wyke*, S. C. 264, 4 *Burn's Justice*, 285, the certificate undertook that Shelve should provide for her and her children whenever they should become chargeable. Lord C. J. Lee and Mr. J. Wright 'agreed that they must take the child referred to by the certificate to be a legitimate child then in being.' In England the settlement of a bastard is the place where he is born. Such was our law (*Bucks County v. Philadelphia*, 1 S. & R. 387), until the passage of the act of June 13, 1836, which declares 'every legitimate child shall be deemed to be settled where the mother was legally settled at the time of the birth of such child.' In England an illegitimate cannot derive a settlement from either of its parents: *Rex v. St. Nicholas, Leicester*, 2 B. & C. 889; 4 D. & R. 462; 4 *Burn's Justice*, 279. Settlement by parentage and settlement by marriage form the two species of what are called derivative settlements, and it is only legitimate children who can acquire a settlement by parentage; for a bastard, according to Holt, C. J., has no father, or rather none that the law looks upon as such, and consequently can derive no settlement from the relation of child and parent: 2 Salk. 427; *Hard's Case*, 4 *Burn's*, 288.

We are of the opinion that, under our law, too, the bastard cannot acquire a derivative settlement from his parents, acquired by them subsequently to his birth. It is true that Woodward, C. J. (*Nippenose v. Jersey Shore*, 48 Pa. 403), in speaking of the settlement of a bastard, said: 'Though the child may acquire a settlement of her own subsequently, and, perhaps, may derive one from her mother, a subsequent settlement acquired by her,' yet that was not the point of the case, and does not decide that the bastard can acquire a derivative settlement from the mother acquired by the latter subsequent to its birth. We know of no other case in this state suggesting such a possibility, nor of any one in terms denying it, except *Crossley v. Demott*, 2 Legal Opinion, 161. In this case it was held 'that the settlement of a bastard did not follow a subsequent change of settlement on the part of the parent.'

"It seems reasonably clear to us that the word child in the statute means a legitimate one only, because an illegitimate child, although having a settlement of the mother at the time of its birth, can acquire no settlement obtained by the mother after it is born. A single woman may have a dozen bastard children, and then acquire a new settlement for herself by hiring and service, but she is powerless to communicate such settlement to her illegitimate children born previously. On the contrary, a woman having a legitimate child can communicate to such child any settlement she may acquire after its birth: *Burrell Township v. Pittsburg*, 12 Smith, 472, 474, 475; *Mifflin Township v. Elizabeth*, 6 Harris, 17, and in order to prevent such undue burdens being cast upon districts, the statute wisely ordains that an unmarried woman [a widow] with a legitimate child can acquire no settlement by hiring and service. Again, when the word child is used in a statute, the presumption is that only a legitimate child is meant. In statutes and in wills, where there are no explanatory words to the contrary, it means legitimate child in all questions relating to inheritance. Why should not the same construction be used

in questions of settlement? It cannot be questioned that the word child means such as have legal existence. *Nullius filii* have no legal existence except such as is conferred by statute, and, in conferring benefits or advantages upon them, the statute always defines them as bastard or illegitimate children. In our state a bastard stands upon a higher plane than he does in England. The act of April 27, 1855, declares that illegitimate children shall take the name of the mother, and that they shall inherit from each other. By the act of May 14, 1857, the subsequent marriage of the parents legitimates the children. This act alone legitimates the children. The previous acts do not, even so far as their mother and her next of kin are concerned: Steckel's Appeal, 64 Pa. 493; Grubb's Appeal, 58 Pa. 55. The act of April 27, 1855, does not render a child legitimate for any other purpose than to take and transmit property: Jane Neil's Appeal, 92 Pa. 193.

"Thus we see that by our law a bastard occupies no better position, so far as a settlement is concerned than he does by the law of England. It is urged, however, that because the act of 1857 legitimates the children upon the subsequent marriage of the parents, that this may happen in the case in hand, and, if it so happens, that the bastard child thus legitimated may subsequently become chargeable on Lewisburg through the mother, and thus undue burdens (which the act seeks to avoid) will be cast upon Lewisburg. Who the father of the bastard children is, and whether he be living or dead, we know not. Neither do we know whether both of the illegitimate children belong to the same father. We dare not assume that this marriage will take place. If it should occur, the children being legitimated, would take the settlement of the father, and the possibility of their ultimately acquiring a settlement in Lewisburg through the mother depends upon so many uncertain and improbable contingencies that they should not be regarded in the solution of the question before us. We are to decide the case upon the facts as they existed

when the record was made up, and not upon uncertain and contingent events that may never happen. At this juncture it is clear that the bastard child born before the pauper hired and served in Lewisburg can acquire no settlement there through the mother. The place of settlement of the mother at the time of its birth is its settlement until it acquires a new one. The child born since the hiring and service would, of course, acquire the settlement of the mother at Lewisburg. This, not because the mother had a bastard child previously, but because the law fixes the settlement of the bastard at the place the mother was settled at its birth. Thus we see no greater burdens are imposed upon Lewisburg by settling the mother there than would have been cast upon it if she had been childless at the time of the hiring and service. It looks to us, then, upon reason and authority, that the word child in the statute means a legitimate child only. This conclusion is strengthened by the fact that our courts have been more liberal in the construction of the statute to give settlements than have the English judges. In reaching this conclusion we are mindful of the case of the Directors of the Allegheny County Home *v.* South Buffalo Township, *Armstrong County*, *Pittsburg Legal Journal*, March 5, 1879, No. 29, p. 115. This case, at first blush, seems in conflict with the views we have just expressed, but a close inspection discloses that it is in harmony.

"In that case the pauper was a widow having a legitimate child born in the county of Allegheny. Both the pauper and the child had a settlement there through the husband and father. After the death of the former the pauper and child went to Armstrong county, where the pauper gave birth to an illegitimate child, and then hired and served one whole year in the township of South Buffalo, in said county. Upon the pauper becoming chargeable in South Buffalo she was removed to Allegheny county. The court below confirmed the order, and the supreme court sustained it on appeal. The decision was manifestly proper, because the pauper had

a legitimate child, and this debarred her from acquiring a settlement by hiring and service. The supreme court expressed no opinion upon the right of the pauper to acquire a settlement if she had had an illegitimate child only at the time of the hiring and service, and very properly, too, because such was not the case before the court. The case, then, is not in conflict with the conclusion which we have reached."⁶³

In this case the order of removal was discharged.

The Word "Child" Applies to "Legitimate Child" Only.

"An order of removal was confirmed by the court below on the ground that in 1886 the pauper in question acquired a statutory settlement in defendant poor district under the provisions of Section 9, Clause 5, of the poor law. . . .

"As to the facts necessary to the acquisition of a settlement under this clause of the act, viz.: That the pauper in question was then an unmarried adult, that she hired as a servant within the defendant poor district, and continued in such service one whole year, etc., it is sufficient to say that they appear to have been found by the learned court upon sufficient evidence. It is therefore unnecessary to discuss the specifications relating to either of said findings of facts; and they are accordingly dismissed without further comment.

"The fifth or sixth specifications allege error in holding that the word 'child,' in the clause above quoted, means only a legitimate child, and that an unmarried female, having a bastard child, may gain a settlement by hiring and service for one whole year.

"We think the learned judge was clearly right in construing the clause in question as he did. In the absence of some qualifying expression, such as is used in the eleventh section of the same act, the word 'child' in legislative enactments, as in legal parlance, generally means only and exclusively a legitimate child. It is used to denote a legitimate descend-

⁶³ Buffalo Township v. Lewisburg Borough, 1 Pa. C. C. R. 121.

ant in the first degree. Sometimes, however, a legitimate descendant in any degree; but, as expressive of that thought, the word children is generally employed: Anderson's Law Dict. 174.

"The questions involved in this case, both of law and fact, appear to have been correctly decided by the court below. There is nothing in either of them that requires discussion. Decree affirmed and appeal dismissed." ⁶⁴

Being Duly Bound Apprentice.

Clause VI. By any person who shall be duly bound an apprentice by indenture, and shall inhabit in the district with his master or mistress for one whole year.

"A pauper in one district was bound by an indenture of apprenticeship, wherein the master agreed to indemnify the overseers should the pauper in any way become chargeable on that district; subsequently the master removed to another district, and later he brought back the pauper to the first district. An order for her removal to the master's present domicile having been made, an appeal was taken and the court discharged the order of removal: Held, affirming the lower court, that the district where the pauper was apprenticed could take advantage of the clause of indemnity in the indenture, and therefore her residence with her master in another district did not constitute such an apprenticeship as, under the act of 1836, was sufficient to create a new settlement. That a pauper who is a charge in one district cannot, while this relationship continues, acquire settlement in another district." ⁶⁵

By Any Indented Servant.

Clause VII. By any indented servant, legally and directly imported from Europe into this commonwealth, who shall

⁶⁴ *Overseers Forest City v. Overseers of Damascus*, 176 Pa. 116. See also preceding case.

⁶⁵ *Lock Haven v. Chapman Township*, 22 W. N. C. 114.

serve for the space of sixty days in the district into which he shall first come: Provided, if such servant shall afterwards duly serve in any other district for the space of twelve months, either with his first employer or his assignee, he shall obtain a legal settlement in such other district.

This means servants imported from Europe, formerly very common, and called redemptioners. An indented servant gained a settlement where he first served sixty days, either with the master to whom he was indented, or with his assignee; and this, though the assignment was voidable, or even void. This clause has now become obsolete.⁶⁶

By a Mariner.

Clause VIII. By any mariner coming into this commonwealth, and by any other healthy person coming directly from a foreign country into the same, if such mariner or other person shall reside for the space of twelve months in the district in which he shall settle and reside.

Diligent search failed to disclose any decision bearing directly upon this clause.

⁶⁶ Reading *v.* Cumru, 5 Binney, 81; Forks *v.* Catawissa, 3 Binney, 22; Ferguson *v.* Buffalo, 6 S. & R. 103.

CHAPTER IX.

SETTLEMENT OF MARRIED WOMEN.

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By Married Woman. P. & L. Dig. 3552, § 144.

Act of 1836, Section 10. Every married woman shall be deemed, during coverture, and after her husband's death, to be settled in the place where he was last settled; but if he shall have no known settlement, then she shall be deemed, whether he be living or dead, to be settled in the place where she was last settled before her marriage.

This section is from the nineteenth section of the act of March 29, 1771.

"John Ehrhart and Rose, his wife, were residents of and had a legal settlement in the poor district of Homer, Potter county. In 1888, the wife became a lunatic and was regularly committed to the lunatic asylum at Warren, Pa., by the court of Potter county, and remains in the asylum at this time. Her husband subsequently, but during the same year, removed to Austin borough, and in 1891 obtained a legal settlement in Austin borough, which he still retains. The poor district of Homer had paid the expenses of the maintenance of the wife at Warren, Pa., since her commitment, said expenses since 1891 amounting to \$365.25. Homer poor district took no steps towards changing their

liability until October, 1894, when an order of removal was obtained, removing said Rose to Austin borough; and at that time they demanded from Austin borough the amount of money they had previously expended, and that thereafter the expenses of the maintenance of Rose should be borne by said poor district. I cannot in this case avoid the conclusion that the said John Ehrhart acquired a legal settlement in Austin, and thereby his wife, Rose, acquired a derivative settlement in Austin; the poor district of Austin is therefore legally chargeable with the expense and maintenance of Rose at the Warren asylum.

"The tenth section of the act of 1836, especially provides that every married woman shall be deemed during coverture and after her husband's death to be settled where he was last settled. The statute is a very plain mandate, and one that we cannot disregard. It was contended by the learned counsel that John Ehrhart acquired no legal settlement in Austin borough, for the reason that his wife was a public charge. Such is the rule in several New England states. It is not the rule in Pennsylvania, as one statute provided that (a settlement may be gained in any district by any person who shall come to inhabit the same and who shall be charged with any public taxes for two years successively): act 1836; there are no exceptions to this act, and under it John Ehrhart obtained a settlement in Austin, notwithstanding the fact that his wife was at the same time being maintained at the public charge: *Scranton Poor District v. Directors of the Poor of Danville and Mahoning*, 106 Pa. 446."¹

Woman Divorced a Vinculo Matrimonii.

"Solomon Betts lived and died in that part of Buffalo township (Union county), which by division, is now East Buffalo, having had a legal settlement therein. In 1806

¹ *Poor District of Homer v. Poor District of Austin*, 19 Pa. C. C. R. 546.

his daughter, Magdalena (the pauper), was married to George Reminger, of White Deer township, who had real estate worth some \$7,000, and cohabited with him (having five children) till 1827 or 1828. On May 21, 1829, the common pleas of Union county, on the application of Magdalena Reminger against George Reminger, decreed a divorce from the bonds of matrimony. George Reminger died, in White Deer township, in 1833. Solomon Betts died in Buffalo, now East Buffalo, in 1836. From the evidence Magdalena gained no settlement elsewhere since her intermarriage with George Reminger. George Reminger and Solomon Betts had legal settlements in their respective townships at their deaths.

"The question was, which township is legally bound to support the pauper?

"October 18, 1849, an order was made by two justices of the peace to remove the pauper from Buffalo to White Deer for support. December 17, 1849, appeal by White Deer to the quarter sessions of Union county. February 18, 1850, opinion of Wilson, J., filed, quashing the order of the justices. His honor said, *inter alia*: 'The declared consequences of divorce from the bonds of matrimony are general, annulling all and any right and claim that had accrued to either in pursuance of their marriage. Her claim to a settlement in White Deer is acquired only by her marriage, which was by law dissolved, and her rights and claims by virtue of her marriage were determined on the legal dissolution thereof. . . . If George Reminger had not had a settlement in his lifetime, Magdalena's marriage to him would not put her in a worse condition than she was before. Her former settlement would be merely suspended during coverture, and, at his death, the place of her settlement before marriage be chargeable with her support: 3 Burn's Just. 485, 486; and so we must view her situation under the declaration of the act of assembly of the consequences that follow the sentence of divorce; and, that her claim for support from the township of

White Deer was an incident merely to her marriage, which suspended her previous settlement only during coverture, and the marriage being legally dissolved, before her husband's death, and she not having gained a settlement since, the township where she was last legally settled, before such marriage, will be bound to maintain her.' "

Upon certiorari to supreme court, that court reversed the order of the court below by a per curiam, in the following opinion:

"Notwithstanding the conceded error of Sir John Pratt, in the decision which gave him more notoriety than any other, it is certain that a *feme sole*, who has a settlement, exchanges it at her marriage for the settlement of her husband, if he has one. It is now conceded if he has not, her maiden settlement remains till she acquires another. Here the pauper's husband had a settlement which she acquired by entering into his person as a part of it. How could she lose it? Only by gaining a new settlement, not by regaining a former one, from which the statute makes no provision. Sir John Pratt's mistake, in his familiar walk of the law, was in entertaining the notion of revival. The widow of a man who had a settlement, has it also; and what difference does it make whether the coverture be dissolved by death or divorce? Our law is not so unjust as to leave the parties, as to their rights and responsibilities, in *statu quo* else they would be answerable for many acts, perfectly good during the coverture, and consequently, not to be questioned after it. A wronged wife loses no right whatever by being compelled to use the only means of redress open to her. If the pauper had no settlement in White Deer, she would have none anywhere." ²

NOTE.—Lord Campbell, in his "Lives of the Chief Justices of England," speaking of Sir John Pratt and his many de-

² Buffalo v. White Deer, 15 Pa. 182.

cisions, recorded in Strange's Reports, Lord Raymond's Reports, Burrow's Reports and Modern Reports, says: "It is curious to observe how many of them turn upon questions of poor-rates and parochial settlement—then a new field of litigation. One, and one only, of these judgments is still interesting, from having been married to immortal verse.

The widow of a foreigner being left destitute on the death of her husband, who had no parochial settlement in England, was removed from a parish in London to the parish in the country in which she was born; but this parish appealed to the quarter sessions against the order of removal, on the ground that a maiden settlement is forever lost by marriage. The justices at sessions, being much puzzled, referred the case to the court of King's Bench, and the decision there is thus recorded by Sir James Burrow in his reports:

"A woman having a settlement,
Married a man with none;
The question was, he being dead,
If what she had, was gone.

"Quoth Sir John Pratt, the settlement
Suspended did remain,
Living the husband; but him dead,
It doth revive again."

CHORUS OF PUISNE JUDGES.

"Living the husband; but him dead,
It doth revive again."³

This decision seems to have created a great sensation in Westminster Hall; but the glory which it conferred on Chief Justice Pratt soon passed away, for, as far as the suspension

³ Burr. Sett. Cas. 124; Burn's Justice, tit. "Settlement."

was concerned, "living the husband," it was reversed by his successor, Chief Justice Ryder, who determined, with his puisnes, that the maiden settlement continues after marriage till a new settlement is gained; and that although the wife cannot be separated from the husband by an order of removal, if he, having no settlement, has deserted her, she may be sent to her parish for relief, even in his lifetime:

"A woman having a settlement,
Married a man with none;
He flies and leaves her destitute;
What then is to be done?

"Quoth Ryder, the Chief Justice,
'In spite of Sir John Pratt,
You'll send her to the parish
In which she was a brat.

" 'Suspension of a settlement
Is not to be maintained;
That which she had by birth subsists
Until another's gained.'

CHORUS OF PUISNE JUDGES.

That which she had by birth subsists
Until another's gained." ⁴

Effect of Divorce A. V. M.

"That the paupers were relieved and maintained by the township of Delaware is fully established by the evidence. It was alleged that the last place of legal settlement of the pauper is not and was not the poor district of Zerbe town-

⁴ St. John's, Wapping v. St. Botolph's, Bishopgate, Burr. S. C. 367; 2 Bott. 109.

ship. The evidence shows, and I find the fact to be, that Susan Miller (Sweitzer), the pauper, was married to Frederick C. Sweitzer on March 7, 1883. They were living at that time in the borough of Milton. On June 28, 1883, Sweitzer and his wife moved into the poor district of Zerbe township. A child was born to them in July, 1884. It was born in Delaware township, where Mrs. Sweitzer had gone. Mr. Sweitzer died on Christmas day, 1886. When Sweitzer, the husband, and his wife moved to Zerbe township, they first moved into a house of C. B. Fisher, and lived in it several months, and paid \$6 per month rent; from Fisher's house they moved into Mrs. Mary Nolpp's house, in September, 1883, and paid \$4 and sometimes \$5 per month rent for several years, twenty-two months at least, and from there removed to Mr. Lewis's house, and remained there four or five months, and paid rent. The houses of Mrs. Nolpp and Mr. Lewis were both in said township of Zerbe.

"On December 19, 1884, Mrs. Sweitzer obtained a divorce from the bonds of matrimony with her husband, Frederick Sweitzer. From June 28, 1883, the day Sweitzer and his wife moved into Zerbe township, until December 19, 1884, the day of the decree in divorce, was one year five months and twenty-one days. During the time the relationship of husband and wife existed, I find that the said Frederick Sweitzer *bona fide* took a lease on real estate in the poor district of Zerbe township of the yearly value of \$10, and dwelt upon the same for one whole year and paid the said rent, by reason of which he gained a settlement in the said poor district. 'A female, who has a settlement, exchanges it on her marriage for the settlement of her husband, if he has one. . . . She will not lose her husband's settlement by a divorce from him *a vinculo matrimonii* on her application.' Buffalo v. White Deer, 15 Pa. 182. The supreme court say, 'A wronged wife loses no right whatever by being compelled to use the only means of redress open to her.' It was held in Overseers of the Poor of Lake District v. Overseers of

Poor of South Canaan, 87 Pa. 19, that 'where a pauper has been divorced from her husband, her settlement is in the district in which her husband resided at the time of the divorce.' It is contended, on the part of Zerbe township, that on June 1 or 2, 1884, the wife, Mrs. Sweitzer, left her husband and did not live with him after that, and that, as the husband, Frederick Sweitzer, had not at the time gained a settlement in that township by taking a lease of real estate of the yearly value of \$10, and dwelling on the same for one whole year, she never acquired a settlement there, notwithstanding she was his wife until the divorce on December 19, 1884, at and before which time he had gained a settlement beyond all question. This argument would have force, perhaps, if Mrs. Sweitzer had deserted her husband, and especially if such desertion had continued for the space of two years, making the ground for divorce complete, but the record of the divorce shows that she obtained the divorce from her husband on the ground of cruel and barbarous treatment, endangering her life, and of such indignities to her person as to render her condition intolerable and life burdensome, and thereby forced her to withdraw from his house and family. It is, therefore, not like a case of adultery or other cause for divorce, committed by the wife, but she was his lawful wife until the time of the divorce, at which time he had gained a settlement; and, as has been shown, she did not lose it by the decree in divorce on her own application. She acquired a settlement pending the proceedings which she was obliged to institute by reason of her husband's cruel conduct. The evidence or depositions taken in the divorce proceedings may not be evidence in this case, but the record of the suit is evidence of the divorce and the ground upon which it was applied for and obtained. There is no evidence of desertion in the case. Sweitzer merely says in his evidence that she 'left him and did not live with him any more.' " ⁵

⁵ Delaware v. Zerbe, 3 Pa. C. C. R. 643.

Woman Divorced a mensa et thoro.

"The question whether a wife, who has been divorced a *mensa et thoro*, on account of cruel and barbarous conduct of her husband, and indignities to her person, rendering her condition intolerable, and life burdensome, and whose husband has deserted her, and moved out of the state, can acquire a settlement in her own right, entitling her to support as a pauper. If she cannot, her lot is hard, indeed, when she becomes old and feeble, and unable to support herself. But we think the effect of the divorce, which separates her from the domicile of her husband, and of his cruel conduct and final desertion leads to a different conclusion. The place of her husband's settlement is no longer her home. She is cast out to seek a residence and a home where best she can find it, and if this leads her into another township or city, why shall she be denied the privilege of seeking comfort and support where the best opening offers to her wandering steps? Humanity, and law, its handmaid, do not say nay. Coverture alone bound her to her husband's settlement, because it made her husband's house her home. But when the law separated her from it, she became a houseless wanderer, unless she can find another by her own volition. Then when we add the legal consequences of her husband's conduct, and emancipation from her condition as a feme covert, so far arises, that she is permitted to act as a *feme sole* in many respects which tend directly to the acquisition of a home. .

"By the second section of the act of May 4, 1855, P. L. 430, 'Whosoever any husband, from drunkenness, profligacy or other cause shall neglect or refuse to provide for his wife, or shall desert her, she shall have all the rights and privileges secured to a *feme sole* trader under the act of February 22, 1718, 1 Smith, 99, entitled an act concerning *feme sole* traders, and be subject as therein provided; and her property, real and personal, however acquired, shall be subject to her free and absolute disposal during life, or by will, without any liability to be interfered with or obtained by her hus-

band; and in case of her intestacy shall go to her next of kin, as if he were previously dead.' So the third section of the act of April 11, 1856, declares that 'Whensoever any husband shall have deserted or separated himself from his wife, or neglected or refused to support her, or she shall have been divorced from his bed and board, it shall be lawful for her to protect her reputation by an action for slander or libel; and she shall also have the right by action to recover her separate earnings or property.' *Black v. Tricker*, 59 Pa. 13. The acts or conduct of the husband, which, under the act of 1855, give rise to these privileges of the wife, establish her rights *ipso facto*, and the decree provided for in the fourth section for the security of creditors, is necessary to confer them. It says also, that the third section of the act of 1856 being *pari materia* proves satisfactorily that a decree as a *feme sole* trader is not essential to the assertion of her rights and privileges in regard to her property.

"In reference to the second section of the act of 1855, Chief Justice Thompson said: 'The section was designed to suspend the marital rights of the husband as a consequence of the acts enumerated, and at the same time to relieve the wife from her marital disabilities.' It will be noticed also that the third section of the act of 1856 expressly includes a case of divorce *a mensa et thoro*. This suspension of marital rights of the husband, and the power to trade, earn property, defend it, and keep it to herself and her children, unite in enabling her to secure a place of business and a home, and thereby to obtain a settlement as a necessary consequence of her legal rights. The fact that in this case Mrs. Boyer did those acts, which, if a *feme sole*, would secure her a settlement in the city of Williamsport, is not disputed. Having, then, in this respect, the power of a *feme sole*, as we have seen, it follows that this settlement was legally acquired and the city is liable for her support as a pauper." ⁶

⁶ *Williamsport v. Eldred*, 84 Pa. 429.

"Where a pauper has been divorced from her husband her settlement is in the district in which her husband resided at the time of the divorce." ⁷

Woman Deserted by Husband.

"Sarah Wall Ziegler, a pauper, became chargeable upon the defendant district September 24, 1891. At that time her husband was living and had an unquestioned settlement in Wyoming borough, which is a part of the plaintiff district, having acquired such settlement both by the payment of his proportion of public taxes for two years successively, and also by virtue of having taken a lease of real estate continuing for several years, the rental of which exceeded \$10 per annum, and having dwelt upon the same for one whole year and paid the rent. Under the tenth section of the act of 1836, the wife's settlement was that of her husband, namely, in the plaintiff district, unless there be something in the case to render it exceptional. It is alleged, however, that Henry Ziegler, Jr., the husband, previously—in 1884—deserted her, and that, although he removed to Wyoming borough in 1888, she remained in Pittston. It is further alleged that, by reason of such desertion she acquired the right to gain a settlement of her own independently of her husband. Conceding this to be true and admitting that Henry Ziegler, Jr., had a settlement in the defendant district at the time of his removal to Wyoming borough, in the plaintiff district, there is no evidence of any kind that she chose, even if she could choose, the former as the place of her settlement or that she gained an independent settlement by any of the means pointed out in the act of assembly. We take it, therefore, that the plain rule laid down in the tenth section of the act of 1836, *supra*, governs this case, and that the settlement of the wife followed that of her husband, and that, inasmuch as he had a settlement on September 24, 1891, when the wife be-

⁷ *Lake District v. South Canaan*, 87 Pa. 19.

came a public charge, her settlement followed his and was in the plaintiff district.

"It may be fairly questioned whether under the evidence Henry Ziegler, Jr., had himself any settlement in Pittston borough at the time of his removal to the borough of Wyoming. As we view the case, however, this is entirely immaterial, for the reason that the wife, so far as the testimony shows, never by any act of hers gained any settlement independently of her husband, or indicated any intention of choosing any other than the one which he undoubtedly acquired as hereinbefore indicated in the borough of Wyoming: *Scranton Poor District v. Danville*, 106 Pa. 446. Although it has been held that 'Where an indigent insane person has no legal settlement in the commonwealth, that his place of residence shall be held to be his place of settlement, and if the evidence fails to show a settlement, but a residence be proved in a poor district, said district is liable for the expenses, which liability can only be thrown off when said district discovers and adduces proof of his place of legal settlement.' *Harmony v. Forest*, 91 Pa. 404. Yet the fact of residence gives a right to relief only when no legal settlement exists within the commonwealth. It follows that the order of removal was well taken, and that Sarah Wall Ziegler had a settlement at the time she became a public charge, in the Central Poor District of Luzerne county, the plaintiff district. We are of opinion, therefore, that the decree of the court below in regard to the order of approval should be affirmed. It was therefore adjudged that the settlement of Sarah Wall Ziegler was at the date of the order of removal in the Central Poor District of Luzerne county, and the order of removal taken by the directors of the poor of Jenkins township, Pittston borough and Pittston township on that day is confirmed, and the appeal taken thereupon by the Central Poor District of Luzerne county is dismissed and the decree of the court below in relation thereto is reversed.

"The appeal from the order of approval taken by the directors of the poor of Jenkins township, Pittston borough and Pittston township taken on September 20, 1893, by the Central Poor District of Luzerne county, is sustained and the decree of the court below in relation thereto is affirmed." ⁸

A Wife Separated from Her Husband May Gain a Settlement for Her Children.

"A wife who has separated from her husband because of his intemperate habits and his failure to support her and her children, may gain a settlement under the poor laws of the state, in a district different from that in which the husband has, or had his legal settlement; and the benefit of the settlement gained by her enures to her minor children.

"A child whose mother had gained such a settlement, after coming of age, left the state, declaring that he was going to New Mexico. After an absence of three years he returned.

"Held, That in the absence of proof of his declarations of his purpose in going, or of his occupation while absent, or of proof that he had no present intention of returning, the loss of his domicile could not be fairly inferred." ⁹

⁸ Central Poor District of Luzerne County *v.* Directors of Jenkins Township, Pittston Borough, and Pittston Township, 4 Sup. Ct. 16.

⁹ Parker City *v.* Dubois Borough, 20 W. N. C. 81.

CHAPTER X.

SETTLEMENT OF ILLEGITIMATES.

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Illegitimates. P. & L. Dig. 3553, § 145.

Act of 1836, Section 11. Every illegitimate child shall be deemed to be settled in the place where the mother was legally settled at the time of the birth of such child.

The leading case on the construction of this section, *Nippenose v. Jersey Shore*, 48 Pa. 402, has been already cited under Section 5, *supra*, to which we refer the reader. The following case is later.

"In an appeal by the overseers of Limestone township from an order of a magistrate removing a pauper, Mary Ann Hepler, to the said township from Licking township.

"The pauper was born in 1846, and was the illegitimate child of Sophia Hepler. The mother was unmarried and lived with her father, who was a farmer in Limestone township. The pauper lived with her mother at the house of Adam Hepler, the mother's father, until 1856. In that year the mother married Michael Whitmer, and took the pauper with her to the home of her husband in Licking township. The pauper was from infancy delicate in health and of feeble mind. For about eighteen years, until the death of her mother in 1874, the pauper lived at the house of Whitmer. She then became chargeable upon Licking township. Sophia Whitmer, the mother, obtained from her father at the time of her marriage \$1,500, which sum at the time of his death in 1869 or 1870 was increased to about \$2,366. In her

will Sophia Whitmer devised and bequeathed all of her property to her husband, and directed 'my said husband, Michael Whitmer, to pay to and for the use of my daughter, Mary Ann, who was born some years before my marriage, the sum of \$240 in one year after my death.'

"Upon a hearing in the court of quarter sessions of Clarion county, the court was asked by the counsel for Limestone township, to rule the law as applicable to these facts as follows:

1. That, although Sophia Whitmer, the mother of the pauper in this case, had a settlement with her father, Adam Hepler, in Limestone township at the time her illegitimate child, the pauper in question, was born, when she subsequently married Michael Whitmer, who had a legal settlement in the township of Licking, where she and her child went and continued to reside from that time until the death of her mother, Mrs. Whitmer, a period of about eighteen years, as is established by the evidence, the settlement by birth of the pauper in Limestone was lost and followed that of her mother into Licking, and therefore the order of removal in this case should be discharged.

"2. That as the evidence establishes that Sophia Whitmer at the time of her death had an estate in her own right, bestowed upon her by her father and inherited from his estate, amounting to about \$2,366, which she distributed by will between her husband, the pauper in question, and the other children, such material circumstances attaching to the settlement of the mother in the township of Licking would fix upon her child, the pauper in question, such settlement of the mother, and therefore the order of removal in this case should be discharged.

"3. That the third section of the act of assembly of April 27, A. D. 1855, which provides that 'illegitimate children shall take and be known by the name of their mother, and they and their mother shall respectively have capacity to take or inherit from each other, etc.,' changes the settlement

of illegitimate children from the place of their birth to that of their mother, and if she owns an estate and has such legal settlement elsewhere, where her child also had its home for a period of eighteen years, as in this case, the order of removal in this case should be discharged."

The court, Jenks, P. J., refused to assent to the foregoing points, dismissed the appeal, and confirmed the order of removal.

The overseers of Limestone township thereupon took a writ of error, and assigned as errors the refusal of the court to affirm the above propositions.

Per Curiam.—"The act of June 13, 1836, expressly enacts that 'every illegitimate child shall be deemed to be settled in the place where the mother was legally settled at the time of the birth of such child.' The act of April 27, 1855, only confers upon illegitimate children the capacity to take or inherit real and personal estate from their mother. But none of the other rights of legitimate children are conferred upon them. It follows that their settlement does not follow the settlement of the mother when she changes her settlement. The settlement of them both remains until they acquire a new settlement of their own."¹ Order affirmed.

In another case, *Lower Augusta v. Selinsgrove*, 64 Pa. 168, Sharswood, J., *inter alia*, says: "In this case no evidence of residence was necessary. The pauper was a bastard, and it is provided by the eleventh section of the act of June 13, 1836, P. L. 543, that 'every illegitimate child shall be deemed to be settled in the place where the mother was legally settled at the time of the birth of such child.' The evidence contained in the depositions certainly did tend to show that the mother of the pauper at the time of his birth had a legal settlement in Lower Augusta township."

The order of removal of the pauper from Selinsgrove to Lower Augusta township was affirmed.

¹ *Limestone Township v. Licking Township*, 1 *Pennypacker*, 475.

CHAPTER XI.

DIVISION OF TOWNSHIPS.

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Division of Townships. P. & L. Dig. 3553, § 146.

Act of 1836, Section 12. If the last place of settlement of any person who shall have become chargeable, shall be in any township which shall have been divided by the authority of the laws, such person shall be supported by that township within the territory of which he resided at the time of gaining such settlement.

“Louisa Burleigh, a pauper whose settlement was the subject of this contention, was at one time the wife of Sylvester Burleigh. He obtained a divorce in the court of common pleas of Wayne County on May 5, 1869, on the ground of desertion. Subsequently she became a pauper, and was supported for some time by the poor district of South Canaan. On April 10, 1877, the overseers of the poor of said district obtained an order of removal to Lake district. This order was appealed from by Lake. The court below dismissed the appeal, which ruling has been assigned for error in this court.

“It is a familiar principle that the settlement of the wife follows the settlement of the husband. Hence it becomes essential to ascertain where the husband was settled at the time of the divorce. It is not denied that at one time prior thereto the settlement of the husband was in that portion of South Canaan not embraced in what is now Lake district. On May 16, 1876, by a decree of the court of quarter sessions of Wayne county, a part of South Canaan and Salem town-

ships were cut off into a new district called Lake. It was contended that at the time of the divorce Sylvester Burleigh's settlement was in that portion of South Canaan which by the said decree was attached to Lake. The twelfth section of the act of June 13, 1836, provides that 'if the last place of settlement of any person who shall have become chargeable, shall be in any township which shall have been divided by the authority of the laws, such person shall be supported by that township within the territory of which he resided at the time of gaining such settlement.' It was said in *Hopewell Township v. Independence Township*, 12 Pa. 92, that the principle established by the act referred to is 'that a settlement has a local habitation in respect to the township itself, and that the fragment of territory into which it falls is to maintain the pauper whether he has been chargeable to the parent township or not.' The manifest object of this section of the act of 1836 was to require each portion of the territory to bear its own burdens in all cases where a poor district is divided by authority of law, and this notwithstanding the fact that the pauper had been a charge upon the parent township or district before the division: *Lewis v. Turbut*, 15 Pa. 145. It was also held that the place of settlement of the father is that of the son until the latter acquires a new settlement; and if the township in which the father had his place of settlement be divided after the death of the father, the place of settlement of the son by virtue of the twelfth section of the act of June 13, 1836, is in the township within the territory of which the father resided at his death; and the fact that the son when a minor worked in another part of the township, which was, after the father's death, formed into another township, will not divest the son of his original settlement. An examination of the evidence in this case leaves no doubt that at the date of the decree in the divorce suit the settlement of Sylvester Burleigh was in what is now the district of South Canaan. This prior settlement then is not denied. When once established it must be presumed to have con-

tinued until by some act he had gained a settlement elsewhere. The fact of his living in Lake after the divorce is not material. The question is, whether at the time of the divorce the *locus* of his settlement had been so changed as to have given him a settlement in Lake if it had been at the time a separate district. Of this there is no evidence. The nearest approach to it is what Burleigh himself says in his testimony: 'When the divorce was obtained in 1869 I was boarding at Rufus Swingle's. I was working on the house or shanty I now live in. The line between Jefferson and South Canaan went right through the house; that part of the shanty in South Canaan was cut off into Lake; I had not lived at the house at the time of the divorce; some of my things were in my father's house at the time of the divorce; some of them were at Rufus Swingle's and some in Jefferson. I kept the keys of the respective houses at my father's while the things remained in them. After the house was done and the divorce, I had the things remaining at father's house brought down to my new house. The house was about half in each township; after the divorce I went to keeping house in this new house; the house now stands all in Lake, as it had been moved.' All this would have been unavailing in an attempt to establish a settlement in Lake in May, 1869, had it then been an independent district. It is equally unavailing to enable Lake to throw the burden of the support of this pauper upon South Canaan. The fact that Sylvester Burleigh, at the time of the divorce had been boarding for a few weeks in what is now Lake, is not important. What he did or where he lived subsequently is still of less importance. While it is not contended that a man having a settlement can acquire another settlement in the same district, yet the *locus* of the settlement may be changed in the same district by such acts as would gain a new settlement in another district.

"We are of opinion that in May, 1869, the settlement of Sylvester Burleigh was in that part of the district now South

Canaan; that he had done no act sufficient to change the *locus* of his settlement in the district, and through it into that portion subsequently incorporated into Lake; and that inasmuch as the settlement of the husband was the settlement of the wife at the time of the divorce, the district of South Canaan is properly chargeable with the support of the pauper.”¹

“Where a pauper was chargeable to a township which was divided, it was held that the overseers of the poor of one of the townships which maintained him after the division, might sustain *assumpsit* against the overseers of the poor of the other township for a ratable proportion of the expense of maintenance.

“Chief Justice Tilghman, in delivering the opinion of the court, says: ‘By the second section of the act of March 24, 1803, if the last legal place of settlement of any person under the poor laws of this commonwealth, now is, or hereafter shall be, in any township divided by virtue of this act, and such shall become chargeable after the division thereof, he shall be supported by that township, within the territory of which he resided at the time of gaining the settlement.’ The expressions, ‘becoming chargeable after the division, etc., are not applicable to a case of a person ‘who had become chargeable before the division.’

“This, however, is not the law now, for in *Hopewell v. Independence*, 12 Pa. 92, it was said, ‘There is no obscurity in the twelfth section of the act of 1836. If the last place of any person who shall have become chargeable, shall be in any township which shall have been divided, such person shall be supported by that township within the territory of which he resided at the time of gaining such settlement,’ are words as plain as could be uttered. The principle established by them is, that a settlement has a local habitation in respect to the township itself, and that the fragment of territory into

¹ *Lake District v. South Canaan*, 87 Pa. 19.

which it falls is to maintain the pauper, whether he be chargeable to the present township or not. There was to be no contribution to subsequent maintenance, in any case, as there had been by the words of the act of 1803, which were purposely omitted. It appears in the case-stated, that the blind boy was an actual charge on the original township; and that the place of his residence, while gaining what may be called his settlement for present relief, was in what is now the new township of Hopewell. The fragment cut off is consequently to maintain him, as did the township of which it was an integrant; and the same thing may be said of the pauper Rutherford. He, too, was properly chargeable to the new township of Hopewell.”²

A petition to the court of quarter sessions of Northumberland county by the overseers of Turbut township for a rule on the overseers of Lewis township, to show cause why they should not pay to them (the overseers of Turbut) the amount which they (the overseers of Turbut) had expended in the maintenance, etc., of a certain pauper, Michael Freese, Jr., whose last legal place of settlement they alleged was in the township of Lewis.

Anthony, J., delivered the following opinion: “The only question of importance in this case is, whether Michael Freese, Jr., the pauper, gained a residence in that part of Old Turbut township which is now Delaware township, so as to make that township liable to support him as a pauper; or whether the residence which he acquired by birth, as the son of Michael Freese, the elder, in that part of Old Turbut now within the bounds of Lewis township, throws the expense of his support as a pauper on Lewis township.

“From the evidence adduced, it is clear that the residence of Michael Freese, the father, was in that part of Turbut now set off into Lewis township, and that his son Michael acquired a residence by birth in Turbut township. Before the

² North Whitehall v. South Whitehall, 3 S. & R. 117.

father died he hired out his son to Daniel Frymire, who worked under a contract for his victuals, clothes and schooling for two years and one month. Michael, the son, was about twelve years old when he went to live with Frymire; and he continued to live with and work for him about one year after the death of Michael Freese's father. All the time the work was done no division had been made of Old Turbut township; but Daniel Frymire lived in that part of said township which was, in the year 1843, set off into Delaware township—the old township being, in the year 1843, divided into three townships, viz: Delaware, Lewis and Turbut.

“ ‘The settlement of a pauper is the place of his birth: the father's settlement is the settlement of the children when it can be found out: 3 W. & S. 548.’ Until the son acquires a new settlement, his father's settlement is his. He must contract a relation inconsistent with the idea of being part of the father's family, as marriage, or arriving at the age of twenty-one years, etc., before he becomes emancipated, etc.

“In the present case, the son had a settlement by birth or parentage in that part of Old Turbut township now within the lines of Lewis township. His father placed him out to work in the same township of Turbut, afterwards within the lines of Delaware township. Did the son gain a new residence by his own or his father's acts? He already had a legal residence in Turbut. Could he gain another residence in the same township? The act of assembly says, ‘he shall be supported by that township within the territory of which he resided at the time of gaining such settlement.’ At what time did he gain a settlement? So long as Old Turbut remained undivided, he had a legal settlement prior to working for Frymire therein. Whether he worked for one year or ten years in the old township, neither gained nor lost his settlement; and the mere fact of performing labor so as to gain a settlement, in case he had none before, would not, in our opinion, take away the original settlement which he acquired as the son of old Michael Freese. We are, therefore, of

opinion that the settlement of Michael Freese, Jr., the pauper, was in that part of Old Turbut which is in the territory of Lewis township, and decree that Lewis township pay the expenses of supporting the said pauper, etc.”

Upon certiorari the supreme court affirmed the judgment, because it was put on the true ground, and that the law of the case was stated by the president with entire accuracy in every particular.³

It was held that when a poor district has been divided, and the question is as to whether one is a resident of the old or new district, it is to be determined by ascertaining whether the *locus* of the settlement has been so changed in the original district by such acts as would gain a new settlement in another district.⁴

Again the question was, “Whether the pauper ever had a settlement in what is now Nicholson borough. He resided in Stone’s house six months and paid \$6 rent; in Sprague’s house five months and paid about \$17.50. These houses are in the borough, but he lacked a month of a year. The act requires the leasing of real estate, and ‘shall dwell upon the same one whole year.’ It is immaterial whether he resided in one or more dwellings (14 Pa. 138), but it is necessary that the tenements be in the same district and the residence one whole year. Miller resided but eleven months in the district of what is now Nicholson borough. He did reside more than a year in what was then Nicholson township, but after he left Sprague’s house he resided in what is still Nicholson township. If the borough had not been incorporated he would have gained a settlement in the township, provided, the relation between him and McGloom was such a leasing as brings him within the act of assembly. Confessedly he occupied McGloom’s house without rent. In the case of Allegheny City *v.* Allegheny Township, 14 Pa. 138, the

³ Lewis *v.* Turbut, 15 Pa. 145.

⁴ Lake *v.* South Canaan, 87 Pa. 19.

renting, although of different tenements, seems to have been for a year, at least. However this may be, it does not enter in this case. Where a township is divided, it is provided in the twelfth section of the act of 1836, 'If the last place of settlement of any person who shall have become chargeable . . . such person shall be supported by that township within the territory of which he resided at the time of gaining such settlement.' If he gained a settlement at all in Nicholson, he gained it at the time he resided in that place, which is now Nicholson township, and hence this order of removal must be discharged: 12 Pa. 92; 15 Pa. 145.

"We think the order, by which it was sought to make the township of Nicholson a party to this suit, must be vacated, and the rule to show cause discharged, for the reason that the contention is between Lennox and the borough of Nicholson. Any order we might make disposing of the order of removal is conclusive between the parties litigant, where the order is discharged. The appeal came into court between these parties, and the order of the court is predicated upon it, and not on any other party unwillingly placed upon the record.

"There are three modes of disposing of an order of removal in the quarter sessions. The first is to confirm it, and when that is done it is conclusive against the appealing parish in favor of all the world. The second is to discharge it, and when that is done the order is conclusive on neither: 8 Pa. 180. Now if Nicholson township were made a party to this proceeding, and we should find that Miller's settlement was in that district, what kind of an order could we make? None other than to discharge the order of removal. Then, by placing that district on the record, nothing is gained." ⁵

⁵ Nicholson Borough v. Lennox Township, 5 Luz. Leg. Reg. 318.

CHAPTER XII.

DUTY OF HOUSEKEEPERS.

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Duty of Housekeepers to Report. P. & L. Dig. 3553, § 147.

Act of 1836, Section 13. It shall be the duty of every housekeeper who shall receive into his house any person who has not gained a settlement in some part of this commonwealth (all mariners coming into this commonwealth, and every other healthy person coming from a foreign country immediately into this commonwealth only excepted), within ten days after receiving such person, to give notice thereof in writing, to the overseer of the proper district.

Failure to Report. P. & L. Dig. 3554, § 148.

Act of 1836, Section 14. If any housekeeper shall fail to give notice as aforesaid, and if the person so received shall become poor and unable to maintain himself, and cannot be removed to the place of his last legal settlement in any other state, if any such he hath, such housekeeper shall be obliged to provide for and maintain such poor person, and in case of the death of such poor person, without leaving wherewithal to defray the expense of his funeral, such housekeeper shall pay the overseers so much as they shall reasonably expend for such purpose.

Enforcement of Penalty. P. & L. Dig. 3554, § 149.

Act of 1836, Section 15. If such housekeeper shall refuse to pay the charges aforesaid, the overseers shall assess upon

him the amount necessary to maintain such poor person weekly, or such sum as shall be necessary to pay such funeral charges, and shall have power to collect the same by warrant of distress, but if such delinquent shall have no goods or chattels liable to distress, he may be committed to jail, there to remain until he shall have paid the same, or shall be otherwise legally discharged.

Sections 13, 14 and 15 are from the act of 1771, Section 25.

The neglect to give notice subjects to the penalty, but is no obstacle to recovery for the maintenance.¹

¹ 12 S. & R. 392, 396.

CHAPTER XIII.

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Order of Removal. P. & L. Dig. 3536, § 113.

Act of 1836, Section 16. On complaint made by the overseers of any district to one of the magistrates of the same county, it shall be lawful for the said magistrate, with any other magistrate of the county, where any person was or is likely to become chargeable to such district into which he

shall come, by their warrant or order, directed to such overseers, to remove such person at the expense of the district, to the city, district or place where he was last legally settled, whether in or out of Pennsylvania, unless such person shall give sufficient security to indemnify such district to which he is likely to become chargeable as aforesaid.

The foregoing section, as well as the next following, are from the twenty-second section of the act of 1771.*

A township cannot be made chargeable with the expense of maintaining a pauper, otherwise than by the previous order of two justices of the peace.¹

Removal for Nurture.

“On an appeal from an order of a removal of a pauper, by two aldermen, the mayor’s court may in part quash the order, and in part confirm it.

“By an order of two aldermen, a woman and her three children were removed from Philadelphia to Bucks county, on the ground of their all having a settlement there. The mayor’s court, on an appeal, were of opinion that the mother and one child had a settlement in Bucks. They therefore confirmed the order as to them. The other children, being under the age of seven years, they ordered to be sent to the place of their mother’s settlement for nurture only. Held,

*In arranging this work, considerable difficulty was experienced as to where to place the various cases where the question of settlement arose. The fountain head is of course Section 9, which points out the different modes of gaining a settlement, but the question more frequently depended on derivative settlements, and came up either under Section 16, which provides for removals, or under Section 19, which gives an appeal, and the same law is applicable to both; both must conform to Section 9. We have therefore placed some under Section 16, and some under 19, having, of course in view, the principal question involved, and yet it was sometimes difficult to decide which was the most appropriate place. To cure this and to prevent an oversight by the reader, a full index has been provided.

¹ *Overseers v. Baker’s Executors*, 2 Watts, 280.

that this was not an original order, and that the mayor's court had a right to make it.

"Where children, under the age of seven years, are sent to the place of their mother's settlement for nurture, the expenses of their maintenance are to be borne by the place from which they are removed, and not by that to which they are sent.

"It is not necessary that the order should specify the age to which the children are to be supported in the place to which they are thus removed, because the law fixes seven years as the age at which nurture ceases.

"Where, on appeal, an order of removal is in part confirmed, and in part quashed, neither party is entitled to costs." ²

Removal of Female Pauper About to be Confined.

"If an unmarried indented female servant becomes pregnant, and be removed by her mistress into another township for the purpose of lying-in, the expenses of which the mistress is able, and agrees to pay, the overseers of that township may, before the birth of the child, remove her to the place of her last legal settlement.

"But they have no power to have her removed to her mistress.

"It appears that a single, unmarried woman acquired a settlement in the city of Philadelphia, by having served as an indented servant for more than a year, and that she had not since gained any other settlement; that, being pregnant of a bastard child, her mistress, on March 19, removed her into Bristol, in the county of Bucks, from Germantown, her place of residence, for the purpose of her lying-in. She placed her with Sarah Armstrong, promising to pay her \$2.25 per week for her expenses during her lying-in. On March 28 Patience

² Poor Directors of Bucks v. Guardians of the Poor of Philadelphia, 1 S. & R. 387.

Evans was removed by this order to Philadelphia, and at the almshouse there was delivered of a female bastard child. She was, at the time of her removal, not actually chargeable, and her mistress was of ability to support her.

"The order of the quarter sessions would have been quite correct as to the child had the facts stated, and those on which the opinion is founded, corresponded. The case states that the child was born in Philadelphia, after her removal. The opinion of the court is given under the mistaken impression that the child was born in Bristol, before the removal of the mother; and that both mother and child, or the child alone, was removed; whereas the mother alone was removed. An illegitimate child is settled in the place of its birth. . . . There are some exceptions to this rule, however, as where the woman with child is removed out of one township into another by collusion with its officers, it is then settled in the township against which judgment is given, or that to which the removal is made where it acquiesces without appeal; or where the child is born, while the mother is in actual custody of the law, as when she is in the county gaol, or house of correction, here it follows the settlement of the mother, or if that cannot be known, it is provided for in the township where she was apprehended. But the only question on the appeal was on the removal of the mother. She had not, at the time of removal, become actually chargeable to Bristol; and it was urged on part of the guardians of the city that a servant with a child, her mistress being of ability to support her, is not removable until she becomes an actual charge. But this woman was on the eve of her delivery; was removed to Bristol, with a view that she might there be delivered. She was separated from her mistress by her consent; she was not in the service of her mistress, living with a single woman; a person of substance in this situation is not removable. Nor is one liable to be torn from her parents, whatever her condition in life may be, and however far removed from being chargeable to the township. Nor is a servant in the service

of her master, forming a part of his establishment, and residing with him, when such master is able to support her. A single woman servant being with child is settled not to be good cause of removal from the service of her master: *The King v. Ogleworth*, Burr. S. C. 302, 304. Where a servant had contracted to serve his master for three years for so much per week, was removed during the time, and while he was actually in his master's service. The chief justice there put an end to the argument on the nature of the contract by saying, 'How could the justices remove him out of the service; it appears the man was actually in the service at the time of the removal,' and the order was quashed. To remove while the servant was in actual service of a master capable of supporting her, on the ground that the servant must afterwards become a charge, is not to be supported; because it would operate as a dissolution of the contract and a discharge of the indenture against the consent of both parties, and while both were actually performing their contracts; besides, in that way a township might prevent a settlement by service, by removing shortly before the end of the year. A servant has not a right to reside in another township upon his master's residence, when he becomes likely to be chargeable, and, therefore, may be removed to his place of settlement. But a servant residing with his master has a right there to reside until he becomes actually chargeable, and, until he becomes an actual charge, cannot be removed from his master. Whenever this question has been discussed, it has always turned on the point of the woman being in actual service and residing with the master; and no case occurs in which, where she was out of service, it has ever been made a question that she was not, in this situation, removable. There is no provision in any act empowering the justices of the peace to remove to his master, a servant likely to become chargeable, or that has become chargeable, provision has been made in other cases. Husbands, in a summary manner, are compellable to make provision for their wives;

parents for their children; and children for their parents, by the twenty-ninth and thirtieth sections of the general act of March 9, 1771, for the relief of the poor, and by the act for consolidation and amendment of the poor laws, so far as relates to the city of Philadelphia, of March 29, 1803, and by act of March 31, 1812. How far the mistress may be responsible for the lying-in expenses and the support of the child is not a question now to be decided; she is not before the court; her liability, and its extent, is for another forum. We are not without decisions in all our courts to guide us on the only question, the removal of Patience Evans. A slave manumitted has a settlement in the township in which his master resides, which is bound, in the first instance, to support him, though it may have a remedy over against the master: *Forks v. Catawissa*, 3 Binn. 32. He is considered, in this respect, as an indented servant; the township is bound to support him in the first instance; the overseers or guardians may have their remedy against the master. How is the pauper to gain immediate relief? He cannot wait the event of legal proceedings against the master, if the master is not disposed to support him; turns him loose on the world; is insolvent; removed to a distance, perhaps out of the state; he is not, in a Christian country, to perish for lack of food. . . .

"The overseers of Bristol were not to wait until she had been delivered, and thus her child, by its birth, obtained a settlement there; it was their duty to remove her to prevent this. The inquiry was, Is she likely to become chargeable? Have they ability to refund the lying-in expenses? Of this they were not to run any risk. They could obtain no order to remove her to her mistress; she was uncertificated; a woman about to be delivered of a bastard child; of no substance; a servant not actually in service; brought into the township for the very purpose of being delivered. Under the express words of the several acts she was likely to become chargeable; the only course was to remove her to her place

of settlement, to that district to which she was alone responsible, for the purpose of obtaining relief of the poor.

"The question is not before the court as to the liability of the mistress or its extent. How far is she liable for the support of the bastard child; how long she continues liable; whether only during the continuance of the indenture, a time which might be added by the court of quarter sessions, or during the period of nurture, or for the life of the child, or would be absolved from all liability on the death of the servant, during the time she was bound to her, are questions deserving much consideration. A person in this situation, likely to cast a burden on the township, to fix it with the support of a bastard child, exposes thus the township to the likelihood of a charge, the ultimate support of the child, and is one likely to become chargeable, and was, therefore, properly removed." ³

Two Justices of the Same Township Cannot Grant an Order of Removal.

An appeal by the overseers of Beaver township, Union county, from an order of two justices of the peace, removing a pauper from the township of Washington to the township of Beaver, in said county, was quashed by the court below on the ground that it was granted by two justices of Washington township.

Upon this point the supreme court said: "The same construction must be given to the act of 1836 as has been already given to other similar provisions in the act of 1771: 1 Yeates, 251; 2 Dal. 213. As it is against natural justice to make a man a judge in his own case, nothing but express words can induce us to give an act of the legislature such a construction. On the last grounds the order of removal is quashed." ⁴

The same was held in another case, Rogers, J., saying:

³ *Southwark v. Bristol*, 6 S. & R. 562.

⁴ *Washington v. Beaver*, 3 W. & S. 548.

"Justices of the peace are incompetent, on the ground of interest, to grant an order for the removal of a pauper from his own township to another: *Overseers of Washington v. Overseers of Beaver*, 3 W. & S. 548. This decision was made on the act of 1836, in accordance with a similar decision (1 Yeates, 251; 2 Dall. 213) on a similar statute. It is, however, said that the fourth section of the act of 1810, which provides, 'that upon an appeal from two justices, no deficiency of form or substance in the record or proceedings returned, nor any mistake in the form or name of the action shall prejudice either party in the court to which the appeal shall be made,' remedies the defect. But the objection is not to the record or proceedings returned, but to the jurisdiction of the justice, on the ground that it is against natural justice to make a man a judge in his own cause. And this principle cannot be dispensed with, except in a case of necessity or by authority of express words in the statute, neither of which can be pretended here." ⁵

Kennedy, J., says: "Aldermen of the city of Pittsburg, however, have jurisdiction to hear and determine the rights and liabilities of the townships of Allegheny county respecting the support of paupers.

"An order for removing a pauper from St. Clair township to Moon township (neither of said townships being within the city of Pittsburg), was made by two aldermen of the city; and the court of quarter sessions, conceiving that the aldermen had no authority to grant the order, quashed it and the proceedings relative thereto. In this it is alleged that the court erred. The court seem to have taken up the idea that the only authority to be found on the subject, which empowered aldermen or justices of the peace to make such an order of removal, was contained in the twenty-second section of the act of 1771, entitled 'An act for the relief of the poor' (1 Smith's Laws, 340, 341); and that, agreeably to the provisions

⁵ *M'Veytown v. Union Township*, 5 W. & S. 434.

of this section, the authority to remove in such a case as the present, is given to two justices of the peace of the county exclusively. Had the case arisen between the two townships within the county of Philadelphia and without the city of Philadelphia, the conclusion of the court might have been correct enough, for that section of the act has reference only to aldermen or magistrates of the city of Philadelphia. It was the only city within the province at the time, and, indeed, is the only one mentioned in the act, and as it does not by its terms contemplate the erection of any other city within its borders, it would seem to be difficult to derive any authority thence to aldermen of a city created subsequently, even to grant such an order between townships, wards or districts lying within the same. But all difficulty in this respect is removed by the eighteenth section of the act of March 16, 1816 (Pamphlet Laws, 168), incorporating the city of Pittsburgh, which declares 'That the mayor and aldermen of the said city (Pittsburg) for the time being shall have the same jurisdiction, in all civil cases, as justices of the peace of the county have, and shall proceed in like manner, for the like fees and costs, and with the like powers and authorities, and subject to the like rules, regulations and restrictions.' Seeing, then, that the present case is one of a civil nature, and that the provisions of the act just recited have expressly extended the jurisdiction of aldermen of the city of Pittsburgh to all such cases, to be exercised and proceeded in by them in the same manner as if they were justices of the peace of the county, it follows, as an inevitable conclusion, that the aldermen had jurisdiction of this case, and that the court of quarter sessions erred in deciding that they had not." ⁶

"Under our statutes the removal is to be to the place where the pauper was last legally settled, 'whether in or out of Pennsylvania,' a provision which may open in some cases a very wide field of inquiry." ⁷

⁶ *Overseers of St. Clair v. Overseers of Moon*, 6 W. & S. 522.

⁷ *Toby v. Madison*, 44 Pa. 61.

"It seems to be settled that a justice of the peace is incompetent from interest to order the removal of a pauper from his own district: 3 W. & S. 548; 5 Ib. 434. But in the present case the removal was not from his own district; and for the purpose of avoiding his order, it is offered to be shown by witnesses that his district was the true place of legal settlement of the pauper. This evidence was properly rejected. It is because interest may affect the judgment that the jurisdiction is excluded. But if the case presented before the justice does not appear to be one in which he is interested, his judgment cannot be affected by interest, and he cannot refuse to act.

"Was the order of removal conclusive of the duty enjoined in it, though made without notice, no appeal having been taken? It seems to us that it was. The office of the order is two-fold. First, like that provided in the sixth section of the poor law, it requires and justifies the placing of the pauper on the poor books, and the law regards the justices as perfectly competent to conduct the inquiry that leads to this result, without giving notice to any one. And second, it decides where the pauper's legal settlement is, and of this the order of removal gives notice. The only notice provided as notice, in the proceeding, is notice of the appeal, and we must presume that no other was intended.

"None is needed for the proceeding before the justices, for their decision concludes nothing as to which district shall finally bear the expense of the pauper, unless the overseers of the district to which he is removed assent to it by omitting to appeal. If there is really a dispute as to the place of settlement, the question is to be decided by the quarter sessions, and the order of the justices merely opens the road to that court, and provides for the custody of the pauper in the meantime." ⁸

⁸ *Bradford v. Keating*, 27 Pa. 277.

Duty of Justice.

"One Alexander Williams, a colored laborer, with his wife and seven children, lived in Parks township, Armstrong county, in December, 1884, and for nearly two years prior thereto. He had supported his family by his own labor and that of his older children, supplemented at times by the gifts of kind-hearted neighbors. He had not applied to the overseers for aid, nor had any one made application on his behalf. The overseers of the poor, however, fearing that he might become chargeable to the district which they represented at some time, and not willing that his residence in their district should ripen into a settlement under the poor laws, went before a justice of the peace, and made an affidavit that Williams and his family were likely to become chargeable to the township of Parks, and that his last settlement was in Gilpin township. The justice thereupon, as his docket entries show, without notice to Williams, without the testimony of a witness, and without any form of adjudication, issued an order authorizing and requiring the overseers to remove Williams and his family to Gilpin township.

"Armed with this order they came to the cabin of the colored man, while he and his family were at their breakfast, loaded the father, mother and children into a wagon and proceeded to 'remove' them from Parks township.

"The colored man tells the story of their removal with simplicity and pathos thus: 'I told him (the overseer) he needn't bother about me, I had plenty to eat. He said he was going to take me if I did have plenty to eat. Me and my family got into the wagon. It reminded me of old times. . . . I told him I was not going. He said I should go, if I did not they would make me; that if I rebelled they would take me by force. He never said why I would have to go.'

"The overseers of Gilpin, to whom Williams and his family were taken, appealed from the order of removal, and on the trial asked the court of quarter sessions to hold 'that it does

not anywhere appear in this case that in granting the order there was an adjudication by the justice.' This the court declined. The appellant also asked the court to quash the order of removal, which was declined. The ruling of the court was erroneous. When the overseers of Park township made their complaint against Williams, alleging his liability to become chargeable, it was the duty of the justice to direct notice to him of the complaint, and upon such notice to inquire into and adjudicate upon the truth of the complaint. If Williams had been a pauper he would not have been entitled to notice of the proceedings for his removal. The contest in that case would have been between the poor districts, in order to determine which of them should be held for the support of one who was a public burden. In that contest he could have no interest. Here, however, the proceeding was against one who was not a public burden. The complaint against him was that he was likely to become chargeable. He was the party against whom the proceeding was in the first instance directed, and it was his privilege to show that the complaint was unfounded. If unable to satisfy the justice that he was not likely to become chargeable, he had the right to give suitable security to indemnify the township against liability for his support.

"If he could do neither of these things, and the evidence justified such action, the justice could properly adjudge that the complaint was sustained, and that Williams should be removed to his last legal settlement. Such an adjudication would support an order removing the person affected thereby from his actual residence to his legal settlement, and for the manner of its execution the 'poor person' would be dependent upon the humanity of the officers whose duty it might be to remove him.

"It follows from what has now been said that the order of removal made in this case without notice to the person to be affected by it, and without an adjudication upon the complaint, was not merely irregular but void. Its execution in

the manner described by the witness was a violation of the bill of rights.

"It is a familiar and favorite maxim of the law that a man's house is his castle. It is applicable to the cabin of the colored man as truly as to the mansion of the rich. Until his liability to become chargeable was established in accordance with the forms of law, Williams could not be removed from his home without his consent." ⁹

Essentials to Justify Order of Removal.

"It is undoubtedly necessary that a pauper before he is removable should have become or is likely to become chargeable to the district which undertakes to remove him, for unless this be the case justices have no jurisdiction, and for want of jurisdiction an order of removal will be quashed.

"An order of removal cannot be sustained when based on the unauthorized act of a volunteer friend, secured without the knowledge or consent of a person who at the time of issue had for sixteen years been an inhabitant of the borough and for twelve years the undisputed owner in fee simple of unincumbered real estate and household goods to the value of \$300 in the district, and of which proceeding she did not have knowledge until after she had perfected her settlement by the payment of taxes for two successive years.¹⁰

Laches.

"Where a district permits a possible pauper to remove and perform all that the state requires to gain a new settlement, it is too late for the district to object that such settlement was not gained." ¹¹

The opinion of the superior court in this case is very elaborate, and embodies the facts which are numerous, but owing

⁹ *Gilpin Township v. Parks Township*, 21 W. N. C. 269; 118 Pa. 84.

¹⁰ *Edenburg v. Strattonville*, 5 Super. Ct. 516. ¹¹ *Ib.*

to its extreme length, we did not feel justified to embody it here, and would refer the reader to the original report, which is very instructive and well repays its perusal.

Abandoning Domicile in Pennsylvania and Returning.

“Isaac Dolby lived until September, 1861, with his father, Christian Dolby, in Limestone township, Union county. In that month he enlisted and served in the army until 1865, when he returned to his father’s house, lived with him and in the neighborhood until April, 1866, when he sold his property in Pennsylvania and moved with his wife to the west. They lived successively in Freeport, Illinois, where their stay was short; in Morgan county, Missouri, where they remained for a year; in Benton county, in the same state, where they took up a homestead of one hundred and sixty acres, built a house and lived from 1868 until 1871, during which time their son, Christian, was born. In 1871 they removed to Henry county, also in Missouri, and while living here their son Samuel was born. In 1873 they left Missouri and settled in Peoria, Illinois, where Isaac died in February, 1875. His widow thereupon came east with her children, and took up her residence with Christian, her husband’s father, who, in 1867, had moved from Limestone township, Union county, to Chillisquaque township, Northumberland county. The children, Christian and Samuel, who are the paupers in question, were supported by their grandfather until October, 1875, when he was granted relief on their account by the overseers of Chillisquaque, and they were supported at the cost of the township from that time until January, 1877.

“Whether the paupers were chargeable to Limestone remains to be considered. According to the case of *Washington v. Beaver*, 3 W. & S. 548, the *prima facie* settlement of a pauper is the place of his birth, but the birth of a child does not give it a settlement, except when the settlement of the parents is not known, and then, only until it is discovered.

"The latter part of this proposition must, necessarily, be subject to the qualification that the known place of settlement of the parents is within the state, for the knowledge of such settlement comes to nothing if it be beyond the jurisdiction of our courts, since it could not, in that event, be charged with the maintenance of the pauper. It is, therefore, obvious that the *prima facie* settlement by birth must become, for all practical purposes, absolute whenever it is ascertained that the child is of foreign or extra-state parentage."¹²

Removal of Paupers into Other States.

"It is indeed true that, by our poor laws, provision is made for the removal of paupers into other states, but this provision is nugatory in that there is no power by which it can be carried into effect; hence, the order of removal loses all force the moment it crosses the state line. In other words, the legislature of Pennsylvania cannot charge the poor districts of other states with the support of paupers, though their settlement may properly be therein, and, per contra, other states cannot so charge the poor districts of Pennsylvania.

"Now, the children who are the subjects of the order under consideration were born, the one in Missouri, the other in Illinois; their father, Isaac Dolby, was resident in the state last named at the time of his death, and had abandoned his domicile in Pennsylvania some nine years previously. We have, therefore, two facts which should definitely settle the question in hand: 1. Isaac Dolby was not a citizen of Pennsylvania when his children were born, and, hence, had no settlement therein. 2. These children were native-born citizens of other states, and must be regarded, for the purposes of this case, to have been settled therein.

"The conclusion made inevitable by the facts and princi-

¹² *Limestone Township v. Chillisquaque*, 87 Pa. 294.

ples developed by this case is, since neither the pauper nor their parents were or are citizens of this state, they must be treated as strangers, and, for the present, that district must be regarded as their place of settlement in which they first became chargeable." ¹³

Returning, Having Gained a Settlement in Another State.

Rockafeller, P. J.: "Oliver Perry Randal was born in Clearfield county, Pennsylvania, in January, 1845. At an early age he came with his father to Howard township, Centre county. In August, 1862, he enlisted for nine months in the One Hundred and Thirty-sixth Pennsylvania Volunteers. He was discharged in May, 1863, and remained at home until March, 1864, and then enlisted in a Pennsylvania Artillery company, and served until January, 1866, when he was finally discharged from the military service at or near Richmond, Va. He then entered the service of the Freedmen's Bureau, as a clerk, and served therein until about April, 1868, when he was employed as a clerk by Captain W. A. Elderkin, a commissary of subsistence in the United States army.

"He remained with Captain Elderkin until April, 1876. At that time the captain was transferred to another station, and Randal did not go with him. He seems to have left the government employ, and remained at Pueblo, county of Pueblo, Colorado, during the year from April, 1876, to April, 1877. During this year he had his wife and children with him, and kept house in Pueblo. He did what he could to make a living, and on the 13th of September, 1876, he was appointed to fill a vacancy in the office of county clerk of Pueblo county, an office to which only a qualified voter, resident for one whole year in the county, was eligible. He filled the office until in December, 1876, having in the meantime been an unsuccessful candidate before his party convention for nomination to the same office.

¹³ Limestone Township v. Chillisquaque, 87 Pa. 294.

"He remained in Pueblo until April, 1877. On the 27th of March, 1877, he wrote his father that 'he was not doing anything regularly this month, but have managed to pick up enough to cover expenses. Shall try to remain here until fall, and try again for county clerk's position. If not I may go to Elderkin's again.'

"He was regularly assessed with taxes for the year 1875, and paid the same. He had also connected himself with a Masonic lodge. In April, 1877, he again took service with Captain Elderkin, and remained with him until July, 1882, when he was again out of government employment until March, 1883, when he was again employed by Captain Elderkin, and until March, 1884, when he finally left the government service. He then came back to Pennsylvania, and went to Philadelphia to obtain employment, having also visited his father, in Howard township. It seems he was unable to find employment. Just how and where he lived for some time does not appear, but part of the time he was with his father, in Howard township. In February, 1885, he came to Lower Augusta township, Northumberland county, where he had a sister living, and was there placed on that township as a pauper. It is a singularly pitiful case.

"On the 16th of May, 1885, the overseers of the poor of Lower Augusta took out an order of removal to Howard township, Centre county, knowing that the pauper's father had a settlement there, and believing that the pauper still held his settlement, which he had derived from his father. The pauper showed signs of insanity, and was finally taken to the asylum for the insane, at Danville, where he remains, and has continued to grow worse. His father is a good man, but is too poor to support him. He (the pauper), has always conducted himself properly, was industrious and sober; whether he was extravagant in his living does not appear, but his employment seems to have been pretty regular and at fair salaries. His family is at Richmond, Virginia, with his wife's friends.

"The pauper never had a settlement in Lower Augusta, and having been removed from the township to Howard township, it became necessary to show that he was last settled there. The evidence shows clearly, and I find the fact, that William Randal, the pauper's father, gained a settlement in Howard township. He lived there and was assessed with public taxes in 1861, 1862 and 1863, etc., and paid the same. He also owned a small amount of real estate, and indeed, there is no dispute as to his having a settlement in Howard township. The pauper went there with him when a minor, and was a part of his family, and derived a settlement from him. This also is not disputed. Howard township, however, alleges that the pauper abandoned his settlement in Pennsylvania, and since gained a settlement of his own in the city of Pueblo, Pueblo county, Colorado, and that being so, he lost his settlement in Pennsylvania.

"If that is so, then according to the case of *Juniata county v. Overseers of the Poor of Delaware*, 107 Pa. 68, the settlement in Howard township is gone. The pauper having become insane, and having only had a residence, and not a settlement in Northumberland county, that county is chargeable with the expense of removal and maintenance, without remedy over against Lower Augusta, if he has been committed by the court of quarter sessions, provided, of course, he has no settlement in Howard township.

"Perhaps, under the act of 1883, the county and state are jointly to pay such expenses. It is the duty of the court, however, to determine this case as it stands, and according to the law and the evidence. By the laws of Colorado, sixty days' continuous residence in any county of said state gives the party so residing a settlement for poor purposes in said county. By the tenth section of the act of the legislature of that state, which became of full force and effect on the first day of July, 1868, it is enacted that the term 'residence,' mentioned in this chapter, shall be taken and considered to mean the actual residence of the party, or the place where he or she

was employed, or in case he or she was in no employment, then it shall be considered and held to be the place where he or she made his or her home.

"I am of opinion, and so find from the evidence in the case, that O. Perry Randal, the pauper, gained a settlement in Pueblo county, Colorado, by having resided there more than sixty days, he having been employed there, and made his home there during that time."¹⁴

Upon appeal this case was affirmed by a per curiam.

Where a poor person, who has acquired a settlement in this state, removes therefrom to another state and there acquires a settlement, but subsequently returns to this state, the poor district to which he comes and first becomes chargeable is liable for his support.

"If the plaintiffs desired a specific finding of the facts they should have framed their points for that purpose. As they stand, they merely refer to conclusions of law. This vein runs all through them.

"An examination of the testimony satisfies us that the conclusions of the court are fully sustained. The pauper, Hetty Porter, undoubtedly had a settlement in the borough of Elderton at one time. She sold her little property there, and moved away, and it is not clear that she acquired a settlement elsewhere in this state. Afterwards she went out west, appears to have led a roving life. From her own statement, and there is little else in the case upon this branch of it, we find she resided in Iowa for over two years. The court so finds, and the pauper so testified. By section 1352 of the code of Iowa it is provided: 'Any person having attained majority, and residing in this state one year without being married, as hereinafter provided, gains a settlement in the county of his residence.' The pauper was not so married, and the court below was of opinion that she had gained a settlement in Iowa. We are not prepared to say this was error. Finally she left

¹⁴ *Lower Augusta v. Howard*, Cent. Rep. Vol. 8, No. 4, p. 488.

Iowa, returned to Armstrong county, and became chargeable in Plumcreek township. She was then in precisely the same position as if she never had a settlement in this state. The rule of law is, that if a foreigner, or a person having no settlement within the state, comes here and becomes a charge, the district to which she comes, or in which she first becomes a charge, is liable for her support: *Limestone Township v. Chillisquaque*, 87 Pa. 294; *Juniata County v. Delaware Township*, 107 Pa. 68; *Taylor Township v. Shenango Township*, 393. This is settled law, and the reason of it is that when such pauper comes into a district, and becomes chargeable therein, there is no other district in the state upon which it can cast its burden. We think the learned judge below was entirely right in this case, both upon the law and the facts, and his judgment is affirmed.”¹⁵

Returning Without Having Gained a Settlement.

“On August 26, 1889, the overseers of the poor of Windham township, Wyoming county, obtained an order from two justices of the peace, removing Lewis Thayer, a pauper, to Braintrim township, as the place of his last settlement. From this order the overseers of the poor of Braintrim township appealed, and the case was heard at August sessions, 1891.

“It is clear that the pauper, Louis Thayer, had at one time, a settlement in Braintrim township. He was born there, and lived there for many years. At the time the order of removal was taken the pauper was about seventy-seven years of age, and, until about 1860, had his settlement in Braintrim township. This settlement he still retains, unless he has acquired another, either in Pennsylvania or out of it. In *Plumcreek Township v. Elderton Borough*, 129 Pa. 626, it was held that where a person having a settlement in this state removed to another state and acquires a settlement there, and then returns to Pennsylvania, the poor district where he first becomes

¹⁵ *Plumcreek Township v. Elderton Borough*, 129 Pa. 626.

chargeable is liable for his support. There is no evidence that Lewis Thayer acquired any other settlement in this state; but it is claimed that he did acquire a settlement in Brooklyn, in the state of New York. Somewhere about 1860 he removed to Brooklyn, N. Y. He lived there several years, voted at one time for mayor, but paid no rent, and failed to acquire a settlement there, if the law of New York is the same as here, which will be presumed in the absence of evidence to the contrary. No evidence has been given that the law of New York is different from the law of Pennsylvania on the subject, and we are therefore compelled to find that the last place of settlement of the pauper was in Braintrim township. If the law of New York be as contended on the argument by the counsel for Braintrim township, we should incline to the opinion that a settlement has been acquired there. But the law of another state must be proven like any other fact. A production of a printed volume of their statutes would be received if offered, but, in the absence of any evidence on the subject, we cannot take notice of their provisions.

"But even if the fact were established that the pauper had acquired a settlement in New York state, and the duty of support thrown upon the poor district where he first became chargeable, we should still hold that Braintrim township is still liable for his support, because it was in that township he first became a fit subject for relief.

"Where a pauper is taken sick in a place where he has no legal settlement, the district is liable for his support until his last place of legal settlement is discovered: *Moreland v. Benton*, 3 W. N. C. 20; *Moreland v. Davidson*, 71 Pa. 371. A short time before these proceedings were commenced, probably in the fore part of August, 1889, Lewis Thayer was in Braintrim township, seventy-seven years old, destitute, without means of support, and unable to work. The pauper says, in his testimony, that he applied to Mr. Gregory, one of the overseers of the poor of Braintrim, for relief. Mr. Gregory denies that he made application for relief in so many words,

but he gave him ten cents to pay ferriage or buy crackers, as he pleased, and directed him across the river to Windham township. When a helpless old man in a starving condition is hunting up overseers of the poor and explaining to them his situation, we can readily credit his assertion that he asked for relief, although the overseer of the poor may have forgotten it. He also went to a justice of the peace in Braintrim township, who agreed to be responsible for his supper at a hotel. To my mind the evidence shows that he was sent over the river into Windham township—not carried there by force, but induced to go there by the citizens and poor officers of Braintrim. We think they understood perfectly that they had a pauper on their hands, and persuaded him to go to Windham, because ‘his son had a farm there,’ to shift upon Windham the obligation which already rested upon Braintrim. The statute of 1836, Section 5, provides that ‘It shall be lawful for the overseers of every district to furnish relief to every poor person within the district, not having a settlement therein, who shall apply to them for relief, until such person can be removed to the place of his settlement.’ Instead of complying with the law, the overseers of Braintrim sent him to a neighboring township. Such an artifice cannot succeed.” Appeal dismissed.¹⁶

Returning Without Having Gained a Settlement in Another State.

“Where a person having a legal settlement in Pennsylvania moves to another state, and resides there two years without gaining a settlement therein, and then returns to Pennsylvania and resides in a district, not the one where he was legally settled at the time he moved from the state, and before gaining a settlement therein becomes chargeable, the district wherein he was formerly settled is liable for his support.

¹⁶ Braintrim Township Overseers v. Windham Township Overseers, 10 Pa. C. C. R. 250.

"The sixteenth section of the act of 1836 declares that it shall be lawful for two magistrates, on complaint of the overseers of any district, 'where any person has or is likely to become chargeable to such district into which he shall come, by their warrant or order, directed to such overseers to remove such person, at the expense of the district, or place where he was last legally settled, whether in or out of Pennsylvania,' etc.

"In the present case there is no legal settlement out of Pennsylvania to which the paupers can be removed. Even if the evidence showed a legal settlement in West Virginia, we could not enforce the provisions of our statute as respects that state: *Limestone v. Chillisquaque*, 87 Pa. 298. That case is cited by the appellant in support of the proposition that the pauper having moved out of Pennsylvania, he, by the act of removal, abandoned his residence and settlement here, and he and his family are to be treated as strangers here, and that district must be regarded as their place of settlement in which they first became chargeable. I do not understand that case to go so far as the appellant's proposition requires. The children (the paupers) were born out of this state, in a state where their parents resided. The children never had a settlement in this state. Mr. Justice Gordon, in delivering the opinion said: 'It is therefore obvious that the *prima facie* settlement by birth must become, for all practical purposes, absolute whenever it is ascertained that the child is of foreign or extra-state parentage.' And again: 'We have, therefore, two facts which should definitely settle the question in hand. 1. Isaac Dolby was not a citizen of Pennsylvania when his children were born, and hence had no settlement therein. 2. These children were native-born citizens of other states, and must be regarded for the purposes of this case, to have been settled therein.'

"In the case in hand Sibylla Morgan had a settlement in the Middle Coal Field Poor District, by relation to her husband, before he moved to West Virginia, and there being no

evidence that he gained another settlement in or out of Pennsylvania, that district must still be her last legal settlement. It is held in Massachusetts that a person having a settlement in that state does not lose it by moving to, and residing in, another state, or even gaining an actual settlement in another state, if he returns: U. S. Digest, 1st Series, Vol. 10, 608, pl. 408. See also New Hampshire, *Ib.* 619, pl. 631; so also in Vermont, *Ib.* 636, pl. 962; 638, pl. 994, 999, 639, pl. 1017, 1018; and also in Illinois, *Ib.* 592, pl. 95.”¹⁷

Again: “Benjamin Bonham had originally an undoubted legal settlement in Huntington township. But the statute authorizes the removal of a pauper ‘to the district or place where he was *last* legally settled:’ Section 16, Act 1836. Therefore, notwithstanding this fact, if he subsequently gained a legal settlement in Ross or Fairmount, it becomes apparent that in either case Huntington is not the place or district where he was last legally settled, and the order of removal will have to be vacated. The vacation of the order of removal is only conclusive as between these two townships. In case it is vacated it will then be the duty of the appellees to take charge of the pauper until they find his place of last legal settlement: *West Buffalo v. Walker*, 8 Pa. 177; *Moreland v. Davidson*, 71 Pa. 371.”¹⁸

Cannot Acquire Settlement While Receiving Aid.

A person who is chargeable to, and receiving aid, as a pauper from one district, cannot acquire a settlement in another so long as that relation exists.

“W., who was receiving pauper aid for the support of two idiot children, from the township of E., his place of legal settlement, leased a house in the borough of M., at a rent of \$100 a year, and occupied it for nearly two years. He continued

¹⁷ *Middle Coal Field Poor District v. Poor District of the Borough of Parryville*, 17 Phila. 658.

¹⁸ *Huntington v. Fairmount*, 2 Luz. Leg. Reg. 441.

to receive the relief mentioned for all but nine months of that time.

"Held, that he did not acquire a settlement in M.

"The overseers of M. were not required to remove W. and his family, as persons likely to be chargeable, under the sixteenth section of the poor law, in order to prevent them from obtaining a settlement." ¹⁹

Place of Settlement—When Fixed.

In an appeal from an order of removal the controversy was about the last place of legal settlement of Jefferson Shaffer, a pauper.

"Shaffer was born in Clinton township, where he resided until about April 1, 1883. From 1871 to 1883, a period of twelve years, he owned a house and lot, and resided there with his family in Clinton township. His unquestioned place of legal settlement April 1, 1883, was Clinton township. Shortly before this time, to wit, January, 1883, his wife had contracted for the purchase of about two acres of land in Brady township, and about April 1, 1883, the Shaffer family removed thereto. Within a month after they moved into Brady township, Jefferson Shaffer, through sickness, was unable to support himself, and became a charge. An order of relief was taken out and served on the overseers of Brady, about April 10, 1883. The place of legal settlement of the man was well known. Accordingly, the overseers of Brady called upon the overseers of Clinton and requested them to attend to the case. The overseers of Clinton well knowing they were liable for his support, immediately took charge of him and provided for his relief in money and provisions at the rate of about two dollars per week, and allowed him to remain with his wife in Brady township. Clinton township continued to furnish relief to this pauper, then staying in Brady township, from April, 1883, to July, 1885, when they refused to do so any longer. An

¹⁹ *Lewisburg v. Milton*, 18 W. N. C. 141.

order of removal was taken out, and the pauper was removed to Clinton township, who takes this appeal."

Cummin, P. J.: "It is claimed by Clinton township that, whilst they were maintaining this pauper, from April, 1883, to July, 1885, he was residing with his wife on her real estate in Brady township, in which he, as her husband, had a freehold estate, and that, having continued such residence for a period of one year and upwards, he acquired a new settlement in Brady township.

"Is this proposition sound?

"When an order of removal is affirmed the district removing the pauper is usually entitled to reasonable costs and expenses, and moneys expended for supporting the pauper from the date of the order of relief, and, in necessitous cases, before the time. This question of settlement is fixed as of the time when the paupers became chargeable; the time when the legal proceedings began. In this case the pauper became chargeable within one month after he removed to Brady township, and has remained a pauper ever since. If an order of removal had been taken out no question would or could have arisen as to the last place of legal settlement of this pauper. An order of removal was not taken out, because Clinton township recognized her liability and took charge of the pauper. No kind of residence for one month will confer a legal settlement under our statute. If the legal settlement of this pauper is to be fixed as of the time he became chargeable, clearly Clinton township is that place. The question raised in this case has been expressly decided in this state in the case of the *Overseers of Lewisburg v. Overseers of Milton*, No. 202, May T., 1879, supreme court, not reported, Judge Bucher, who heard the case in the sessions had said: 'We simply hold that a pauper who is chargeable and receiving aid from one district cannot acquire a settlement in another district so long as that relation exists.' This was the real point in the case, and it was affirmed by the supreme court in a *per curiam* opinion.

"The case of *Scranton v. Danville, etc.*, 10 Out. 447, is not in conflict with the authority just cited. In the *Scranton* case, the man, the head of the family, who had been permitted to acquire a new settlement, was not himself a pauper, or receiving support, only his wife, whom he had long before abandoned, was receiving aid from the district of his former place of settlement.

"It was also claimed by Clinton township that the pauper could not be removed from his freehold. That such is not the law in Pennsylvania was expressly ruled in *Forks v. Easton*, 2 Wharton, 405." The order of removal in this case was affirmed."²⁰

Illegal Marriage, Settlement of Children.

"The settlement of a husband in a poor district is the settlement of his wife and their children; but where the woman is not the man's wife and their children are illegitimate, his settlement is not theirs.

"As a decree upon an appeal from an order of removal does not affect any of the legal rights of the alleged wife and her children, excepting their right to support by the poor district, the validity of the illegal marriage may be determined in such a proceeding."²¹

Removal of Pauper With Unlawful Wife and Illegitimate Children.

"On an order of relief signed by two justices of the peace of Clarion county, Pa., requiring the overseers of the poor of Elk township to receive Madore Rose, as a 'poor impotent person' and 'to make suitable provision for him until he can be removed to the place of his last legal settlement,' and, on the same day, an order of removal was issued, directed to

²⁰ *Brady Township v. Clinton Township*, 1 Pa. C. C. R. 127; affirmed 148 Pa. 311.

²¹ *Wayne Township v. Porter Township*. 138 Pa. 181.

the same overseers, to remove the said Madore Rose to Beaver township, Clarion county. From this order of removal an appeal was entered to the court of common pleas of Clarion county, the order of removal set aside, on March 24, 1885, a writ of error taken to the supreme court, and the judgment affirmed November 1, 1886, and a motion for a re-argument refused October 10, 1887. On August 13, 1887, an order of removal was issued by two justices of the peace of Clarion county, directing Valentine Phipps and P. M. Sloan to remove Madore Rose and also Mary Ann Rose, his wife, Robert K. Rose and Margaret G. Rose to Jordan township, Clearfield county, Pa., and on September 22 and 23, 1887, the order of removal was tendered to the overseers of Jordan township aforesaid and refused acceptance.

At this time, and for a long time prior thereto, Madore Rose was a paralytic, and it was impossible to remove him except by incurring such risks as would make his removal border on the inhumane. He had been living and cohabitating with Mary Ann Rose, *nee* Wensel, since the latter part of 1881, probably since December 24, 1881, and Robert K. Rose and Margaret Rose are the fruits of the cohabitation. Madore Rose and Mary Ann Carl (*nee* Wensel), were married on the day last mentioned, or at least a marriage ceremony was performed. It is proven by the respondents, on the part of Jordan township, that Mary Ann Wensel was married to Henry Carl and had three children by him, and that she was not divorced from him nor was he dead at the date of her supposed marriage to Madore Rose, nor is there anything to show his death even at this date. That the marriage to Madore Rose was illegal, and that the unfortunate offspring of this cohabitation hold the relation to Madore Rose of a *nullius filius* seems to be the inevitable consequence of the facts, under the laws of this commonwealth.

Prior to the issue of the order of removal bearing date August 13, 1887, no order of relief had been issued, save the one bearing date July 7, 1884, in which Madore Rose alone

was named as the person to receive relief. And it is a fact that Mary Ann Rose, Robert K. Rose and Margaret G. Rose were at no time prior to August 13, 1887, or up to September 22 and 23, 1887, when the order of removal was served upon the poor overseers of Jordan township, placed as charges upon the township of Elk, in Clarion county, by an order of relief, duly obtained on information or complaint before two justices of the peace. Nor, indeed, was any step taken in this direction, so far as the testimony before us discloses anything.

"Under this somewhat anomalous condition of things, what are the legal rights of the parties in this proceeding? It is well settled now that the only remedy from an order of removal is by an appeal to the courts of the proper county: *Sugarloaf Township v. Schuylkill*, 44 Pa. 481; *Renova v. Half Moon Overseers*, 78 Pa. 301; *Parker's Overseers v. Jersey Shore*, 82 Pa. 279, 280. If, then, Madore Rose was, by due proceedings had, a proper charge in the first order of relief, it is clear that as to him the failure to appeal to the court of Clarion county from the order of removal is conclusive of the question of settlement, and Jordan township overseers cannot show a settlement elsewhere or want of settlement in their district.

"But it is urged that the application now before the court is under Section 23 of the act of 1836, and not under Sections 16 to 18 of that act, and that Elk district must in this proceeding accompany its demand for maintenance with proof of settlement, in Jordan district. We do not assent to this contention on the part of the learned counsel for two reasons: First, because Section 23 applies only to, and was intended for, that class of cases called emergency cases—where the relief must be immediate and prompt, and no sufficient time is had to sue out the order of relief before the relief is furnished; and second, in cases where actual removal is impossible, owing to the condition of the pauper; yet in such cases the order of removal must be duly pursued, they come under

the sixteenth and subsequent sections of the act of 1836; and under the authorities, when unappealed from they are conclusive of the facts adjudicated thereunder. To hold otherwise would change the venue from the court of Clarion county to the court of Clearfield county, without anything in this twenty-third section relied upon to justify such a change.

"But a more difficult question underlies this case upon the facts as they appear when we come to deal with the remaining three persons, namely, Mary Ann Rose, or Carl, Robert K. Rose and Margaret G. Rose. It is clear that the marriage with Madore Rose was unlawful and a nullity. She did not become his wife, to be accepted as such by the law and entitled to the rights and privileges and protection that a lawful wife is entitled to under the law. The seventeenth section of the act of 1836, which 'provided that it shall not be lawful to separate any wife from her husband,' does not protect her. It would not be profitable to enter into a disquisition upon the sanctity of the marriage relation and the protection thrown about it by the law. The cold fact is, under the evidence before me, this woman was not the wife of Madore Rose, and the children, the fruit of their cohabitation, are without a legal father in the eyes of the law. In addition to this difficulty, just stated, is to be added the fact that no order of relief was ever issued to make them a legal charge and proper subject of relief upon Elk township, Clarion county. The relief furnished the supposed wife and children of Madore Rose was not in pursuance of the statutory regulations, but partakes more of an act of mercy on the part of the overseers than a legal obligation. This being so, what power was there in the justices to order the removal of persons who had never been made 'legal objects of relief'? The question of their being proper subjects of relief was never passed upon; they did not come within the emergency class, and, without this, how could an order of removal be issued? To give full import and effect to a principle such as this would confer upon justices a power of ordering the removal of any person

who in their opinion and without a hearing might become a charge. The order of removal must be founded upon a previous order of relief. If the order of relief is wanting, except in cases of emergency, perhaps, the order of removal is void.

"The case of *Gilpin Township Overseers v. Parks Township Overseers*, 118 Pa. 84, is not a parallel case upon the facts. But, in that case, where the order of removal was granted without a hearing and without any notice to the person whom the overseers had made information against as 'likely to become a township charge,' was declared by the supreme court, in the opinion of Justice Williams, a nullity. It is true the person there was not a pauper; if he had been, no notice to him would have been necessary. But where, in the case in hand, is there any evidence that the persons named in the order of removal of August 13, 1887, other than Madore Rose, had been made subjects of relief?

"How can we now here inquire into the facts preceding the order of removal? Is it not conclusive, and can it be set aside and declared a nullity except upon appeal? Undoubtedly this would be beyond our power, if an order of relief had been issued regularly for Mary Ann Rose, Robert K. Rose and Margaret G. Rose, and they duly adjudicated paupers. But this is wanting, and no evidence exists in this case that any notice was given them or either of them, of the intended application by the overseers of Elk township for an order for their removal, because they were about to become a charge upon the township. To this is the answer, doubtless, that they were recipients of the township's bounty at the time, not legally but actually, and that two of them were of such tender years that notice would have been merely perfunctory. But the statute requires that 'no person shall be entered on the poor book of any district or receive relief from any overseer before such person or some one in his behalf shall have procured an order from two justices, etc.' Section 6, act 1836. The aid given them was therefore contrary to law and of no

force to bind the district. The sixteenth section of the act of 1836 provides for the removal where one has become a charge. But, under the latter part of this clause the supreme court has decided that notice to the person must precede the order for removal: *Gilpin Township v. Parks Township*, 118 Pa. 84. I am of the opinion that the due and regular observance of these prerequisites is essential to the orderly administration of the law and necessary to the protection of the individual as well as the right of the municipalities, and that, not having been observed, the court may inquire whether the justices, when they issued the order had obtained jurisdiction in accordance with the mode pointed out by law; and, if not, their act was a nullity and the court may at any stage of the proceedings afterwards set the order aside. It is well settled now that the power of justices of the peace is wholly statutory, and if they have no rightful jurisdiction to pass on the matters before them, the question of jurisdiction may be raised in any court called upon to pass upon the question, and in any form in which it may come before the court: *Pantall v. Dickey*, 123 Pa. 431. It must also be borne in mind that the proceedings had before two justices in an application for an order of removal are extremely summary and are therefore to be subjected to careful scrutiny, and the prerequisites of the statute which grants the power must be carefully observed in order that its exercise may be sustained. Less vigilance of the court may lead to gross abuse of this summary power vested in men generally unlearned in the law.

"Having thus reached the conclusion that, under the evidence, the order of removal ought not to have issued as to Mary Ann Rose, Robert K. Rose and Margaret G. Rose, it becomes a pertinent inquiry in this application to ascertain what relationship they held to the pauper, Madore Rose. If she, Mary Ann, was the lawful wife, certainly, under the statute, she could not be separated from her husband, but this, we have seen from the evidence, she was not. Her last

place of legal settlement was not where Madore Rose had obtained his last legal settlement, but that of her lawful husband, Henry Carl; unless, indeed, after his desertion of her, she had acquired a settlement by her own acts, of which we have no evidence, and the question is itself now immaterial. How, then, can the amount expended for the relief of Madore Rose be ascertained? The evidence relating to these expenditures does not make this at all clear, and it is left more as a matter of conjecture than to be ascertained from the proofs.

"It is argued that it was the duty of Elk township, in presenting this demand, to sustain their right to recover by proof satisfactory, and that would enable Jordan township to know what part of the demand was furnished Madore Rose, and what part to the other persons. Conceding the force of this argument, it is also of importance to end this litigation, if possible to do so, upon a basis that will approximately do justice to the parties. It must be borne in mind that all that part of this case which is doubtful, and that relates to Mary Ann Rose and her two children, the fruits of her supposed marriage to Madore Rose, might have been eliminated if Jordan poor oversers had promptly appealed from the order of removal served on them on September 22 and 23, 1887. There has been laches on both sides, and all that can be done now is to endeavor to do equal, if not exact justice, and end this litigation by dividing the money or relief furnished in such proportions as they probably bear to the four persons named. The pauper, Madore Rose, it is shown was a helpless paralytic. Mary Ann Rose was only a subject of needful relief at times, and the two children were of such tender years that they were either subjects of charity or to be maintained by the district. After examining the bills presented here, and scanning them as closely as the evidence would permit, they are apportioned three-fifths to support Madore Rose and two-fifths to Mary Ann Rose, or Carl, and her two children, no interest is allowed because of the laches of

Elk district in making their demand. The part of this claim thus apportioned, as having been furnished this woman and her children, is rejected, for the reason already set out and repeated here: that she was not the lawful wife of Madore Rose, and that, as to them, there is no lawful claim upon Jordan poor district, and that the order of removal, not having been preceded by an order of relief, or notice, is a nullity." ²²

Constructive Removal.

"The learned president of the quarter sessions was clearly right in finding the last place of legal settlement of Sarah Emily Wolford was in Donigal township, Butler county. All that can be profitably said on that subject will be found in his opinion.

"But, assuming the correctness of that finding, it is further contended that the court had no jurisdiction, because the pauper in question had been previously committed to Dixmont insane asylum by defendants in error, and has been there kept and maintained by them ever since; and their remedy, if they have any, is by proceeding under the twenty-third section of the act of 1836, and not under the sixteenth and eighteenth sections of the same act.

"We cannot assent to this proposition. The twenty-third section was intended to provide for cases of sudden emergency, sudden sickness, injury, or death, and the like, and not for cases such as the one under consideration. While a strictly literal reading of the sixteenth and eighteenth sections may appear to favor the ideas of actual removal and acceptance of the pauper, the spirit of the act gives it a much wider scope. In cases like the present, where actual removal of the pauper is impracticable and unnecessary, a constructive transfer from one district to the other, by delivery of the order of removal, is sufficient to meet all the requirements of the act in that re-

²² *Elk Township Overseers v. Jordan Township Overseers*, 10 Pa. C. C. R. 245.

gard. It does not appear that either the physical or mental condition of the pauper was such as to have permitted her actual removal from the asylum and delivery to plaintiffs in error; but under the circumstances disclosed by the evidence, such a useless formality would have been inhuman and unnecessarily expensive to the plaintiffs in error. Their refusal to honor the order of removal by assuming charge of the pauper was not based on non-delivery to them in person, but because they denied that her last place of legal settlement was in their poor district. The purely technical objection to the form of the proceeding was an afterthought.”²³

Emancipation.

The question was whether one Ann Sperry had a settlement in Davidson township by reason of her father having a settlement there while she was a member of his family. She undoubtedly did if she was not emancipated in law, or in fact, before she came to live in Davidson township.

“This pauper arrived at the age of twenty-one years while she was a member of her father’s family, in Huntingdon township, Luzerne county, several years before she removed with the family to Davidson township; that she never married, and that she was always of sound mind and body and able to take care of herself until the accident happened in 1868, which rendered her chargeable. After she was of age she could have left her father’s house at any time; he could not compel her to serve him any longer, nor restrain her from going and doing as she pleased. She was no longer under any legal restraint whatever. She was then freed or emancipated by the law, and had power to do anything that might lawfully be done by anybody, and of course was competent by her own acts to acquire a settlement for herself in any of the modes prescribed in such cases, by the statute.

“Although we do not find any case in this state squarely

²³ Donigal v. Sugar Creek, 20 W. N. C. 307.

deciding it, we think the rule of law is, that children arriving at the age of twenty-one years are *ipso facto* to be considered emancipated, unless they are compelled to remain longer with their parents on account of some infirmity of mind or body, which renders them incapable of taking care of themselves.

"That arriving at the age of twenty-one years is equivalent to emancipation is plainly indicated in *Lewis v. Turbut*, 15 Pa. 147. Judge Anthony in the court below, there said: 'The settlement of a pauper is the place of his birth; the father's settlement is the settlement of the children, etc. Until the son acquires a new settlement his father's settlement is his. He must contract a relation inconsistent with the idea of being part of his father's family, as marriage, or arriving at the age of twenty-one years, etc., before he becomes emancipated, etc.' In affirming this judgment of the court below the supreme court say in their per curiam opinion, 'The law of the case was stated by the president judge with entire accuracy in every particular.'

"That children are not to be considered emancipated at the age of twenty-one years who are compelled to remain longer with their parents, on account of some infirmity of mind or body, which renders them incapable of taking care of themselves, has been repeatedly decided in this and other states.

"In *Washington v. Beaver*, 3 W. & S. 548, the pauper was a lunatic. In *Shippen v. Gaines*, 17 Pa. 38, the pauper was an idiot. In *Toby v. Madison*, 44 Pa. 60, the pauper was a lunatic. In *Wayne v. Jersey Shore*, 1 W. N. C. 340, the pauper was insane.

"In support of the rule as to children of sound mind and body, as we have above stated it, may be cited the following authorities: *Monroe v. Jackson*, 55 Maine, 55; *Lowell v. Newport*, 66 Maine, 78; *Oxford v. Rumney*, 3 New Hampshire, 331; *Springfield v. Wilbraham*, 4 Mass. 493; *Upton v. Northbridge*, 15 Mass. 237; *Buckland v. Charlemont*, 3 Pick. Mass. 175. The only case we have been able to find tending to sustain a different rule is the case of *Alexandria*

v. Bethlehem, 16 New Jersey, 119. But an examination shows that the pauper in that case is not necessarily in conflict with the rule; that a child which has been emancipated from her father's family, does not, except by her own acts, acquire a settlement where her father subsequently goes to reside, scarcely needs authority for its support. The following cases, however, will be found in point: *Washington v. Beaver*, 3 W. & S. 548; *Lewis v. Turbut*, 15 Pa. 145; *Lowell v. Newport*, 66 Maine, 78; *Springfield v. Wilbraham*, 4 Mass. 493, and *Buckland v. Charlemont*, 3 Pick. 172.

"Having found that Ann Sperry, the pauper, in this case, was of sound mind and body, and well able to take care of herself when she arrived at the age of twenty-one years; and at that time the settlement of her father was Huntingdon township, Luzerne county, we hold that Ann was then emancipated, and that she could not have a settlement derivatively from her father in Davidson township, Sullivan county, the district to which she removed with him after arriving of age, and in which he subsequently acquired a settlement." Order of removal vacated.²⁴

Evidence, Interpretation of.

"We do not see that the court erred in their conclusions from the evidence. That the evidence is not strong is an insufficient reason for reversing. Did the court draw from the evidence before them a proper conclusion of fact? We cannot say they did not, and in order to establish error we must be satisfied that the court below ought to have drawn a different deduction. The evidence in the former case (71 Pa. 371) was very weak, indeed. Yet this court did not then reverse, because it was susceptible of the interpretation given to it by Judge Elwell. The very weakness of the evidence, then, is a reason why we should not reverse now, in a different state of evidence, which changes the conclusion. There is no

²⁴ *Moreland v. Davidson*, 71 Pa. 371.

sufficient evidence to charge Benton township. Moreland must resort to the last place of legal settlement of the pauper, wherever that shall be found.”²⁵

Res adjudicata.

An order of removal unappealed from is conclusive against all parties named in it.²⁶

The order should state that the complaint was made by the overseers of the poor, and that the pauper is likely to become chargeable.²⁷

But the order need not show that the pauper or any one was examined. It is not necessary that an examination of any person should be set forth. If any pauper was injured by a removal the remedy might be had here, on information, and, though it will not restore him, yet he might have complained to the sessions, where everything was open.²⁸

“It is to be noticed that the proceeding reported in 71 Pa. 371, was between the same parties and related to the same subject-matter as the one before us, viz.: the ascertainment of the last place of settlement of the pauper, Ann Sperry. And it is also to be noticed that in that proceeding Moreland township was the appellant. Chief Justice Gibson, in *West Buffalo v. Walker Township*, 8 Pa. 180, said: ‘It appears that an order of the sessions confirming an order of removal is conclusive against the appealing parish against all the world.’ In the view we take of this branch of the case it became necessary to inquire into the effect to be given to the fact appearing in the record of the former decree (71 Pa., supra), viz.: that that decree was made against Moreland, not because the pauper did not have a settlement in David-

²⁵ *Moreland Township v. Benton Poor District*, 3 W. N. C. 20.

²⁶ *Schuylkill v. Montour*, 44 Pa. 484; 3 Burn’s Just. 594-7; *Bradford v. Keating*, 27 Pa. 277; *Westmoreland v. Conemaugh*, 34 Ib. 232.

²⁷ *Overseers of Dromore v. Overseers of West Hanover*, 1 Yeates, 366.

²⁸ *Fallowfield v. Marlborough*, 1 Dallas, 32.

son township, but because in the investigation of the question there presented it appeared that the pauper had acquired a settlement elsewhere after she left Davidson.

"We think the supreme court in their wisdom foresaw the very question now before us, and expressly provided against their decree being construed to be final and conclusive between these parties. Chief Justice Thompson, in delivering the opinion of the court, says: 'I will not speculate on what might be the condition of affairs if it should turn out eventually that she had no residence in Benton or in any other township excepting at her derivative settlement, which it seems was Davidson township, we leave this until it occurs.' " ²⁹

"Where an appeal has been taken from the order of a justice of the peace, unduly removing paupers, and the appeal is sustained and the costs allowed to the appellants, the court may further order at the same session payment of such sums as may have been expended for the relief of a pauper between the time of an undue removal and the determination of the appeal from the decree authorizing such undue removal.

"When a demand can be divided into separate parts, each of which is a cause of action, and where the record does not in terms embrace the whole, the whole cannot be considered to have been adjudicated." ³⁰

"In an order committing a lunatic who was a pauper, the court granted a rule upon the overseers of the township to show cause why they should not pay to the county the expense and costs of the proceedings in lunacy. The overseers by their answer denied their liability and the settlement. The court discharged the rule 'without prejudice to the county as to further proceedings against the township of last settlement when ascertained.' Held, that discharge of the rule was conclusive in favor of the township against which

²⁹ Davidson v. Moreland, 7 W. N. C. 12.

³⁰ Huntingdon v. New Columbus Borough, 16 W. N. C. 237.

the rule was directed, and that the county could not proceed against it a second time for the purpose of collecting the expenses of the support of the lunatic."

Mr. Justice Thompson, in his opinion, says: "It is manifest that in discharging the rule the court decided that the appellant had failed to establish this ground of liability, and therefore determined the questions now raised in this proceeding. 'A judgment between the same parties is conclusive of matters determined or which might have been determined: *Pennock v. Kennedy*, 153 Pa. 579.' . . . That the record shows the rule discharged, 'without prejudice to the county to proceed against the township of last settlement when ascertained.' . . . The words 'without prejudice to the county as to further proceedings against the township of last settlement when ascertained' relate to the townships other than Plumcreek."⁸¹

Res adjudicata—Past Support and Costs.

"A rule on the overseers of the poor of the borough of Sligo to pay to the overseers of Piney township the expenses incurred and paid by Piney in the maintenance of John F. Meyers, a pauper. On July 25, 1883, Meyers had his thigh broken, and, by an order of relief, dated the same day, became a charge on Madison township, the township in which the accident occurred. In August, 1883, an order was issued for the removal of the pauper to Piney township. Meyers was physically unfit to be removed, and the overseers of Piney, when the order of removal was served on them, agreed with the Madison overseers for the keeping of Meyers in Madison township. He was kept under this arrangement until the following February, when Mr. Hosey, one of the overseers of Madison, prepared a statement for the keeping of Meyers, and took it with the order of removal to Mr. McKee, one of the overseers of Piney. Meyers was still

⁸¹ *Armstrong v. Plumcreek*, 158 Pa. 92.

unable to be moved. McKee received the order of removal and promised to pay the debt. After that date the overseers of Piney provided for Meyers, and they subsequently paid to Madison township the full amount of his claim, \$172.91. Piney township supported Meyers in Madison township from February 12 to April 16, 1884, at an expense of \$55.41. No appeal was taken by Piney township. On April 16, 1884, the overseers of Piney took out an order of removal of Meyers to the borough of Sligo, and served it on S. M. Servey, the acting overseer of Sligo, together with a copy of their claim, and demanded payment. Mr. Berrane, the acting overseer of Piney, testified that Mr. Servey accepted the order and pauper. Meyers yet remained in Madison township. Mr. Servey called on him soon after and found him able to work, and believing that he would be able to take care of himself and family soon, he did nothing for him, and gave no further attention to the case. No appeal was taken from this order of removal.

“The order of removal taken by Madison to Piney, and not appealed from, was conclusive as between those townships that Piney was the legal place of settlement of the pauper, and, pursuant to that order, Piney township incurred and paid the indebtedness mentioned. Likewise the order taken by Piney to Sligo, and not appealed from, determined, as between those districts, that Sligo is the place of settlement, and it is contended that the latter order, being conclusive as to the settlement, makes Sligo liable to pay Piney the proper charges incurred by Piney in the keeping of the pauper prior to the order of removal. That the order is conclusive on Sligo on the question of settlement is not disputed, but the liability of Sligo to pay for the prior expenses is denied. The diligence of counsel in searching for an adjudication on this precise point was barren of results, and, in the absence of any decision, the only way in which full force can be given to the recognized legal effect of the orders of removal not appealed from, is to decide that each district should pay the

expenses which were incurred during the times the respective orders were in force—that is to say, Piney, having accepted the pauper, became liable for his support, and continued so liable until the order of removal was served on the Sligo overseers; and Sligo should pay expenses incurred since. The fact has not been overlooked that Sligo was in no way affected by the order of removal taken by Madison to Piney, which is only conclusive on the parties, and that Sligo would not be entitled to plead that order in bar of an action by Piney against Sligo. Under all the facts, the court is of the opinion that both orders should be given their full legal effect. The expenses were incurred and paid under and by virtue of the legal liability imposed by the order of removal upon that district, and we believe cannot be recovered back from Sligo. But further, Piney and Sligo are contiguous districts—the latter was formed out of territory of the former—yet Piney accepted the pauper, and supported him for more than eight months without making any claim against, or giving any notice to Sligo. This, under the circumstances of this case, is such laches as should preclude a recovery. It does not appear that Piney incurred any expense for the pauper after the order of removal was taken to Sligo, and there is only the cost of the order of removal and the costs of this proceeding to be provided for.

“The rule to show cause was discharged, and the costs of the order of removal and one-half of these proceedings to be paid by the overseers of the poor of the borough of Sligo, and the other half to be paid by the overseers of Piney township.” ⁸²

Act April 15, 1867, P. L. 84. P. & L. Dig. 3540, § 119.

An Act to provide for the payment of costs in the removal of paupers, in certain cases.

Whereas it sometimes happens that a pauper, removed

⁸² Piney Township v. Sligo Borough, 2 Pa. C. C. R. 134.

upon an order of removal from two magistrates, in pursuance of existing laws of this commonwealth, is accepted by the district to which he, or she, may be removed, without appeal.

And whereas, doubts exist as to the rights, under existing laws, of the district, so removing, to recover costs and charges in such cases; therefore

Be it enacted, etc., That the true intent and meaning of the existing laws of this commonwealth, that the district, so accepting said poor person, shall be liable to the district removing said poor person for costs and charges, in the same manner, and to the same extent, that they would have been had the case been determined against said district by the court of quarter sessions, upon an appeal from said order of removal.

Act May 12, 1897, P. L. 63. P. & L. Dig. Sup. 465, § 7.

An Act in relation to the removal of poor persons from one district to another.

Section 1. Be it enacted, etc., That no order of removal of any poor person from one district to another shall be made without at least five days' previous notice to the proper officers of the district to be affected, and an opportunity given them to be heard.

Since the passage of the foregoing act five days' previous notice must be given to the proper officers of the district to be effected, before a removal can legally be made.

Contracts for Support of Paupers Outside Their District.

"In a case on petition and answer the following facts were admitted, viz.: That George Armstrong, wife and children, were paupers upon the borough of Berwick. That Berwick is a separate poor district, without a poor house.

"That the said poor persons received relief and support under an order for the same, and were furnished a dwelling house or residence up to April 1, 1889. Since then, and up to May 25, 1889, aid has been refused them because the paupers would not remove or voluntarily consent to be removed

by the overseers of Berwick to a place furnished and provided for them outside of the Berwick poor district in which they resided and had a settlement.

"The overseers had made arrangements to have them received and cared for either at the Bloom poor house or at the Luzerne county poor house, and went so far as to give them money to defray the expenses, and allowing Mr. Armstrong to privately and quietly go there with his family as if without compulsion. After receiving such money as aforesaid he refused to carry out his contract and declined either to go or return the money. Thereupon the overseers refused to give further aid or support until he and his family did consent to be removed, which consent was, consequent to this proceeding, given and their removal to the Luzerne county poor house accordingly took place.

"Because of the pauper's acceptance of the terms offered by the overseers, we are asked by the counsel for the respondents to say that the paupers are thereby estopped from denying the authority of the overseers to thus remove them, etc. This we decline to do for the reason that the overseers' refusal and failure to furnish supplies for their wants and needs may have compelled them to accept. We can scarcely conceive a greater duress than exposure to the elements and starvation to force a person to submission.

"The further fact that George Armstrong, the father, received money from the overseers, which he promised to use in removing himself and family to the Luzerne county poor house, and afterwards refused to either go or return the money, would not, of itself, warrant the overseers in refusing or withdrawing aid. At most, it was but a civil contract and promise which the pauper had the undoubted right to make, and his failure to fulfill is governed by remedies other than the withdrawal of the poor district support. . . .

"Another and important question to be determined in this case is, Have the overseers of the poor, under the act of 1836, the right and power to remove and maintain poor persons in

a poor house or other charitable institution outside of their poor district, against the wishes of the paupers.

"Section 7 of the act declares that 'it shall be lawful for the overseers of every district to contract with any person for a house or lodging for keeping, maintaining or employing such poor persons of the district as shall be adjudged proper objects of relief, and there to keep, maintain and employ such poor persons, and to receive the benefit of their work and labor, for and towards their maintenance and support, and, if any person shall refuse to be kept and employed in such home he shall not be entitled to receive relief from the overseers during such refusal.' Other sections of the same act provide that it shall be the duty of the overseers from time to time to provide and furnish relief to every poor person lawfully applying within the district. Also that, with the concurrence of the supervisors, the overseers can employ poor persons able to work, to open and repair roads and highways within the district (and the word 'district' is construed by the act to mean 'township' or 'borough'), and every municipal division in and which officers charged with relief and support of the poor are directed or authorized by the law to be chosen. Poor houses and charitable institutions are managed and controlled by directors, commissioners or trustees, and the language of the act giving authority to the overseers of the poor to contract is 'with any person.' Person means man, or woman, some individual or resident of the district. In this state poor houses, by the act of June 4, 1879, are created by a vote of the qualified electors of the district, and whether or not the paupers of the same shall be kept and maintained in one, even in their own district, must first be determined by a vote in which the pauper has a voice.

"This is also true in relation to the townships composing and controlling the Bloom and Luzerne poor houses. The act of assembly incorporating them empowers their commissioners to contract for and receive and keep paupers from other districts, but the contracting parties on the other side

should do so only by and with the consent of the paupers. The legislative construction placed on the word 'district'—the words used in the different sections of the act of assembly 'within the district,' are powerful arguments to our mind, clearly convincing us that the legislative intent was at the passage of the act, that, without the pauper's consent, he must be kept and maintained and permitted to inhabit within the district. Our act of assembly, unlike those of several other states, does not give the overseers discretionary power to keep and maintain paupers in any part of the commonwealth. In districts where there is no poor house, or other place for keeping and employment of the poor, the adult sane poor cannot be removed to a place of the kind outside of the district without their consent. Many poor persons are worthy and respectable. A person does not forfeit his citizenship and all by becoming poor. His every right but property remains. If an elector, his right to vote remains, and within the district, although the same may be connected with a county or district poor house as to require his residence there and outside of his voting precinct. His right of residence may be very dear to him. Other self-sustaining members of his family to whom he is closely attached may own property and permanent residence within his district. Kind-hearted neighbors and endearing companions may surround him there. His privilege of selecting associates, the transactions of the neighborhood of his acquaintance, and to accustomed temperature are not lost to him because he becomes poor. Life-long knowledge of the people and the locality may afford him untold pleasure of every sense but taste. The cabins of the poor and their inmates and surroundings within his district may be a thousand times more preferable and enjoyable to him than the stately mansions of the rich. Shelter, food and raiment form but a small part of the pleasures and comforts of life, and the lack or loss of these does not sacrifice or forfeit any others.

"The answer of respondents is insufficient in law, the rule

is made absolute and a writ of mandamus is awarded according to the prayer of the petitioner, all costs of the proceeding to be paid by the respondents. This is not a case where attorney fees can be awarded to the winning party.”⁸³

But see following act passed July 9, 1877, P. L. 222, entitled

An Act authorizing contracts to be entered into between the overseers of the poor of any borough or township in counties not having county poor houses, and the authorities in charge of the poor in adjoining counties having county poor houses, for the maintenance of the poor of such boroughs and townships, fixing the rate of compensation therefor, and the method of collecting the same.

Section 1. Be it enacted, etc., That the overseers of the poor, in each borough and township in the commonwealth, in all counties not having poor houses, are hereby authorized to contract with the authorities in charge of the poor in any adjoining county having a county poor house, for the maintenance of the poor of such boroughs and townships, and to remove such poor to the poor houses of such county.

Section 2. The authorities in charge of the poor in all counties having county poor houses, are hereby authorized to enter into contracts for the maintenance of the poor of any borough or township of any adjoining county not having a county poor house, and to receive and maintain the poor of such boroughs and townships in the same manner as the poor of said county having such county poor houses are maintained, at the expense of the poor districts of said boroughs and townships, and to charge therefor a sum not exceeding the per capita cost of maintaining their own poor, and the same shall be collectible in the same manner as costs and charges on order of removal are now by law collectible.

Derivative Settlement from Mother.

“It has been repeatedly decided (15 Pa. 145; 12 Pa. 92; and 3 S. & R. 117), and cannot now be a question, that children, until they have acquired legal settlements by their own acts, remain settled where born, the settlement of their parents

⁸³ *Armstrong v. Berwick Borough*, 10 Pa. C. C. R. 337.

being their settlement. This is a deduction from the statute, for it is not so expressly provided by the act of June 13, 1836. But the act expressly provides that after the death of the husband the wife's legal settlement shall be deemed to be the place where he was last legally settled. This is equivalent to the expression, 'shall be taken to be,' and admits of the existence of a different state of facts, namely, a settlement acquired by the widow herself; and so it has been decided in *Mifflin Township v. Elizabeth Township*, 18 Pa. 17. That a widow may acquire a legal settlement thus admits of no doubt. She may undoubtedly lease or buy real property and occupy it, being *sui juris*, as well as another. Still we have no reported decisions which carry a derivative settlement to her children, as a consequence of her settlement. Nor is there any statutory provision or decided case against it, in this commonwealth. Why, therefore, shall it not be so on principle?

"It is the headship of the family which gives to the settlement acquired by the father the same right to his emancipated children. Why, therefore, should not this be so of the last legal settlement of the mother when she by death of her husband becomes the head of the family? I see not wherein charges upon the public would be increased by the application of the rule to an acquired settlement by the mother. She, if of sufficient ability, like her husband if living, is liable by the statute to maintain her children, and keep them from becoming a public charge. There is no distinction in this respect. Nor is there any difference in the process and mode by which she acquires a settlement from that of any other person. She becomes entitled to it by a compliance with the terms of the act of assembly, by leasing property of a certain yearly value, residing therein and paying the rent for one whole year, or by purchasing real property, occupying it and paying taxes for the same length of time. In the same way the husband, if living, would acquire a settlement for himself, and which would be communicable to his children. It is

neither according to the natural or statutory law that a woman is to separate from her children, or they from her, on the death of her husband; nay, more, they cannot be taken from her. What good reason can there be alleged why, when necessity, it may be, induces the widow with her family to leave the place of her husband's last settlement with a view to better her or their condition, that she shall not, on complying with the terms of the law, acquire a settlement communicable to her children? I see none, and I think there is none.

"In England there is none, as has been decided in many cases: *St. George's Parish v. St. Catharine's*, 1 Sessions Cases, 73; 2 *Ld. Raym.* 1474; *Fortescue*, 218. So in *Rex v. Barton Turfe and Happesburg*, 2 *Ld. Raym.* 1734, coram Lord Hardwicke, C. J., and associates. It was thus held that a child may gain a settlement under its mother's settlement, after the father's death, equally as under its father while living. The mother's settlement has the same effect upon the child as the father's had. This case is to be found in *Burr. Settlement Cases*, 72, and in 3 *Burn's Just.* (374) 442. See also *Rex v. St. George's in Hanover Square*, *Set. Cas.* 278. There is no difference between an acquired and derivative settlement: *Ib.* 482.

"In Massachusetts the same thing has been held in several cases: *Dedham v. Natick*, 16 *Mass.* 135, a decision in point, and contains a reference to others. *Wilde, J.*, in rendering the decision of the court, says: 'The mother, after the death of the father, remains the head of the family. She is bound to support them if of sufficient ability; and they cannot by law be separated from her.' And in concluding in favor of the derivative settlement from the mother, he remarks that this accords with the English decisions on the subject: *Great Barrington v. Tyingham*, 18 *Pick.* 264; in *Bradford v. Lunenburg*, 5 *Vt.* 481; *Hebron v. Colchester*, 5 *Day*, 169; *Norwich v. Saybrook*, 5 *Conn.* 384, and in *Lebanon v. Belure*, 6 *Ib.* 45.

"More cases to the same effect might be cited, but we think it unnecessary. It is not an answer to this view of the case that the common law distinguishes between the rights of father and mother, in relation to the right of suit on account of services, or for injuries to children, growing purely out of the relation of parent and child. The cases cited by the learned counsel for the defendant in error, of *Leech v. Agnew*, 7 Pa. 21, and *Fairmount Pass. Ry. Co. v. Stutler*, 54 Pa. 375, mark this. The distinction seems to be that as the mother is not by implication of law bound for maintenance and education of her children, while the father is, therefore she cannot be entitled to claim for services or injury as parent merely. But this is the difference between their parents, in relation to private parties; as to the public, in regard to their children, they are on precisely the same footing; each is bound to maintain them against becoming a public charge. As to the public, therefore, each should derive the same results from settlement and communicate similar consequences to their children, when no statute or policy forbids it.

"Entertaining these views, we think the learned president of the quarter sessions committed an error in reversing the order of the justices in the case, and that his order must be reversed." ³⁴

Children of Widow Re-marrying.

The settlement of a woman acquired by marriage is not communicated to her children by a former marriage.

A pauper was born in Schuylkill county, Pa. His father and mother removed from that county to Delaware township, in the county of Northumberland, bringing the pauper with them when he was a small boy. About five months afterward the father died, and the widow returned to Schuylkill county, taking the boy with her. The mother acquired no settlement

³⁴ *Burrell v. Pittsburg Guardians et al.*, 62 Pa. 473.

in Delaware township during her widowhood, and the father had acquired none previous to his death. The widow afterward re-married, and she and her husband moved to Delaware township and lived there a number of years, the widow's son, the pauper, living with them until he grew to manhood. It was not shown that he ever gained a settlement by any act of his own. After coming to manhood he drifted from one place to another and finally became a charge upon the district of Clinton township. It was proven that the pauper's mother gained a legal settlement in Delaware township through her second husband, during the time that the pauper was a member of his mother's family. It was in the year 1872 that he became a charge on the Clinton district. In 1884 the overseers took out an order of removal and the pauper was removed to Delaware township. The latter township then took out this appeal.

Cummin, P. J.: "The only question of law involved . . . is this: Is a mother's settlement acquired by her second marriage communicated to her children by a former husband? If this proposition can be affirmed the order of removal in this case might be affirmed if the proofs were deemed sufficient. That it cannot be affirmed is ruled in a number of cases: *Rex v. St. Giles in the Fields*, Burrow's Cases, 2; *St. Giles v. St. Clements*, Burn's Just. 375; *Taunton v. Taunton*, 16 Mass. 51. In *School Directors v. James*, 2 W. & S. 570, Gibson, C. J., premises 'certain principles about which there is no dispute. The domicile of an infant is the domicile of his father during the father's lifetime, or of his mother during her widowhood, but not after her subsequent marriage, the domicile of her widowhood continuing in that event to be the domicile of her child. A husband cannot be properly said to stand in the relation of a parent to his wife's children by a previous marriage, when they have means of support which are independent of the mother, in whose place he stands for the performance of her personal duties, because a mother is not bound to support her infant children so long as they are of the ability to sup-

port themselves. Neither can they derive the domicile of a subsequent husband from her, because her new domicile is itself a derivative one, and a consequence of the merger of her civil existence. Her domicile is his because she has become a part of him. But the same thing cannot be said of her children. Having no personal existence for civil purposes she can impart no right or capacity which depends on a state of civil existence, and the domicile of her children continues after a second marriage to be what it was before it.' On reason and authority the order of removal in this case cannot be sustained, and it is therefore discharged." ⁸⁵

Again: "Edward James Barry, a pauper, was born in the borough of Northumberland, on the sixteenth of September, 1884. His parents were both foreigners, the father Edward Barry, being a native of Wales, and his mother a native of England. They lived together as husband and wife in Northumberland at the time of the birth of their son. The mother died on January 24, 1885, and was buried by the overseers of the poor of Northumberland, on the 26th. On the 27th the father left, and has not since been heard of. The mother of the pauper's mother also resided in Northumberland, and upon her death, took charge of the pauper, who was then about four months old. The mother of the pauper's mother was married to one Peter Waters. They were very poor, and were obliged to ask for assistance. Finding work at Northumberland to be scarce, they moved to Milton, and took the pauper along with them. An order of relief was taken out and the pauper placed on Milton for support. The overseers of the poor of Milton took out an order of removal and removed the pauper to the borough of Northumberland, from which order the overseers of the poor of the borough appealed. Neither the pauper, his mother, father, or grandmother ever had a settlement in Milton. That borough contends that the pauper had at least a *quasi* settlement in North-

⁸⁵ Clinton Township *v.* Delaware Township, 1 Pa. C. C. R. 375.

umberland, if in fact he was not legally settled there by reason of his birth at that place; and that the burden of finding his legal settlement is on Northumberland and not on Milton. The rule of course is that a pauper can only be removed to the place where he was last legally settled, but it is contended that there is an exception to this rule, as where a stranger, wounded or sick, must be supported by the district where he is at the time he falls helpless, etc.: *Overseers v. McCoy*, 2 P. & W. 432; and *Overseers of Versailles v. Overseers of Milton*, 10 W. 360, and kindred cases. In the present case the pauper was born in Northumberland, and lived there until his mother died, and was buried by the overseers of the poor, and the father, a foreigner, abandoned him. It was there that he first became helpless. The taking him to another district where he had no settlement does not make that district liable for his support. It is well settled that a pauper's settlement is the place of his birth until it is shown that he has another. This was directly decided by the supreme court of this state in the case of *Jersey Shore v. Williamsport*, a case heard and decided by me in Lycoming county a few years since. I have not at present a reference to where it is reported. 'Where a child is first known to be that parish must provide for it until they find another.' By Holt, C. J., Burn's Just., 377, and other cases there cited, I am of the opinion that the point is well taken by Milton, but counsel for both sides have raised another question, one which I think there is no doubt about, but which has never been decided by the supreme court of Pennsylvania, so far as we know. Milton having shown that the pauper was born in Northumberland, to which place he has been removed, and that that place is, by reason of his birth, *prima facie* his place of settlement, Northumberland contends that it has shown that his last place of settlement is in Turbut township, Northumberland county. If Northumberland is in a position to show this as against Milton, under the circumstances, then the question arises: Is a mother's settlement, acquired by her second marriage, com-

municated to her children by a former husband? The facts of the case are sufficiently found in the answer of the court to the plaintiffs' and defendants' points.

"If the pauper's mother, who is a child of a first marriage, follows the settlement of her mother, in right of a second husband, then the pauper's settlement is Turbut township, where such husband is legally settled by reason of having taken a lease of real estate and residing thereon for one whole year, and paying the rent. That such is not the law, I think is very clear. In the case of *Wangford v. Brandon*, 4 Burn's Just., 336, 'three poor men of Wangford came into the parish of Brandon, and there married three poor widows of Brandon, who received relief from the said parish, each of which widows had children by their former husbands, some under seven, some above seven years of age. It was holden that the children did not gain a settlement in Wangford, nor were removable thither, to charge that parish. As to the nurse children, they might, indeed, be sent thither for nurture only; yet still the parish of Brandon must relieve them there, and not the parish of Wangford. But the children above the age of seven years ought not to be removed at all, being settled inhabitants of the parish of Brandon. And the removal of the mothers shall have no influence in the settlement of the children.' See also the cases of *Cumner v. Milton*, and *Woodend v. Paulspury*, in the same book, page 336. The case of *Rex v. St. Giles in the Fields*, found on the same page, but reported fully in *Burrows' Settlement Cases*, page 2, was a well considered case.' There were several arguments, and all the former cases cited. 'The pauper's father's settlement could not be discovered. His mother's settlement before their marriage was known. His father died. His mother married a second husband, who had a settlement, and she consequently gained a new settlement by this second marriage.' It was held that the children of a first marriage do not follow the settlement of their mother in right of a second husband, unless for nurture; and even then at the charge of the parish

where they are legally settled. See also the case of *Freetown v. Taunton*, 16 Mass., p. 52.

"The question, I understand, has been decided by Judge Ellwell, in Columbia county, and by Judge Cummin, in Lycoming county: *Clinton township v. Delaware township*, 1 Pa. C. R. 375. It was also decided by this court in the case of *Danville and Mahoning against Point township*, all following the ruling in the cases cited. Counsel for the overseers of the poor of Northumberland contend that the question is not settled, and I suppose it will not be so considered until it is decided by the supreme court. . . .

"The later Massachusetts cases were decided, as I understand it, upon the statute of that state, passed after the decision in the case of *Freetown v. Taunton*, above cited. The rule of the common law is not denied. There is no statute or decision in Pennsylvania changing it. The case of *Burrell Township v. Pittsburg Guardians of the Poor*, 62 Pa. 472, is not to the point. The case only determines that a widow may acquire a settlement different from that of her husband, by complying with the terms of the act of assembly, which is communicable to her children. The widow had gained a settlement of her own, after the death of her husband, by leasing a house and living in the same for a year, and paying the rent. It was held that she was the head of the family, was capable of acquiring such settlement, and of communicating the same to her unemancipated children. There are certain expressions in the opinion of Chief Justice Thompson that doubtless tend to mislead. For instance, he says: 'Still we have no reported decisions which carry a derivative settlement to her children as a consequence of her settlement. Nor is there any statutory provision or decided case against it in this commonwealth. Why, therefore, shall it not be so on principle?' *Rex v. Inhabitants of St. Mathew Bethnal Green, Burrows' Settlement Cases*, 482. It will be seen by a reference to that case that the judges all said there was no difference between an acquired and a derivative settlement; but they were considering

the case of a settlement of a man's wife derived from him. He had derived a settlement from his mother, who had derived a settlement by reason of her birth. It was held that such derivative settlement was imparted to his wife and children. No such question as is now before the court was considered in that case or the case decided by Chief Justice Thompson. The mother of the pauper in the present case was born in England. She was a child of the first marriage of her mother, and I hold that she did not acquire a settlement of her mother in right of her second husband, according to all the authorities. The order of removal was confirmed." ⁸⁶

Emancipation of Children.

"Sarah Holmes, a pauper, was born October 18, 1861. About the year 1865 her father moved with his family into Eldred township, where he continued to reside until April 1, 1888, when he went into Loyalsock township and lived there until his death, which occurred in April, 1891. It is admitted that he had acquired a settlement in Eldred township prior to his removal therefrom, and it is a fact clearly established by the evidence, that he had a farm in Eldred township, on which he resided for at least nine years, preceding the time of his removal to Loyalsock township. There is therefore no doubt that he had a legal settlement in said township of Eldred as early as 1880. Sarah Holmes, the pauper, arrived at the age of twenty-one years on October 17, 1882. At this time she had no mental or physical infirmity which rendered her incapable of taking care of herself. From the time she was nineteen years of age she worked a great part of the time among strangers, and received her own wages, which she applied as she pleased. She continued healthy and able to work until about two years after attaining her majority, when she became afflicted with a spinal disease from which she has

⁸⁶ *Milton v. Northumberland*, 1 Pa. C. C. R. 375, 20 W. N. C. 84.

never recovered. Since her sickness, and up to the time of her father's death, she lived with him, and was maintained and provided for by him. Before taken sick, although she was working for other people the greater portion of the time, she still continued to call her father's house her home. At the time she took sick she was in the employment of a stranger, but was immediately taken to her father's house, where she remained until his death. The father having since April 1, 1885, acquired a settlement in Loyalsock township, and the pauper having acquired none in her own right, it is contended by the defendants that she has acquired a settlement in Loyalsock township derivative from her father. This position is undoubtedly correct, if the pauper in this case was not emancipated, or if, when she became of the age of twenty-one years, she was compelled to remain with her father on account of infirmity of body or mind which rendered her incapable of taking care of herself: *Worthington v. Beaver*, 3 W. & S. 548; *Shippen v. Gaines*, 17 Pa. 38, and numerous other authorities. But this is not the case before us. The pauper in this case was competent, both mentally and physically, of acquiring a settlement when she arrived at the age of twenty-one, and for two years thereafter. It needs no authority to show that the settlement of the parents when she arrived at the age of twenty-one years was her settlement, and I hold that that settlement will continue until she acquires another in her own right. Having arrived at the age of twenty-one years, she was no longer under any legal restraint, and no longer dependent on her father, and was at liberty to do anything that might lawfully be done by anybody, and was therefore emancipated. When there is no infirmity of body or mind, the rule is that children become emancipated at the age of twenty-one years: *Montoursville v. Fairfield*, 112 Pa. 99; *Washington v. Beaver*, 3 W. & S. 549; *Moreland v. Davidson*, 7 W. N. C. 14; *Oxford v. Rumney*, 3 N. H. 332. The mere fact that a child should continue to live under the same roof with the father does not

change this rule: *Beaver v. Bare*, 104 Pa. 58; *McCloskey v. Cyphert*, 27 Pa. 220.

"These cases sustain the general principle that the emancipation of the child from the control of the parent may be as perfect while living under the same roof as if they were separate. . . . In the case of *Springfield v. Wilbraham*, 4 Mass. 495, it was ruled that legitimate children when emancipated are no longer in a condition to derive a settlement from their father. . . . In *Buckland v. Charlemont*, 3 Pick. 173, which was a case of one *non compos mentis* after arriving at the age of twenty-one years, it was ruled in such a case that his settlement did not follow the settlement of his father. . . . We therefore conclude that the settlement of the parent, when the child arrives at the age of twenty-one years, if that child is free from mental and bodily infirmity continues to be its settlement until it acquires a new one in its own right. And it was adjudged that the place of the last legal settlement of Sarah Holmes was in Eldred township. This decree was affirmed by a *per curiam* of the supreme court."³⁷

Emancipation.

Craig, P. J.: "Ida Hower, the pauper, was born on June 18, 1879, at Pen Argyl, Northampton county, Pa. Her father died there when she was about seven years old. Her mother still keeps house at the same place. When she became about fourteen years of age she left her mother and went to Stroudsburg, in Monroe county, where, and in East Stroudsburg, she resided until the issuing of the order of removal (March 11, 1897). She was then removed to the almshouse of the plaintiffs, where she had an illegitimate child on April 22, 1897. Some time after the birth of the child she was married to its father, Joseph Starnier.

At the argument it was conceded that the pauper had lived

³⁷ *Loyalsock v. Eldred*, 154 Pa. 358.

and done service for hire in the borough of Stroudsburg for more than a year previous to the issuing of the order of removal. This could not well be denied under the evidence. The pauper, during the year, had worked for wages at a silk mill, a woolen mill and a hotel, and from October, 1896, to March, 1897, she worked with Mrs. Starner for her board. This gave her a settlement under Section 9 of the act of June 13, 1836; *Fayette Township v. Fermanagh Township*, 1 Dis. Rep. 795; *Heidelberg v. Lynn*, 5 Wh. 430; *Kelley Township v. Gregg Township*, 2 Walker, 383; *Overseers v. Overseers*, 176 Pa. 116.

"The contention of the appellant is, however, that the pauper was a minor at the time that she left Northampton county and is still a minor, and that, therefore, her settlement is still there, it being the place of her birth, and the home of her mother. The rule of law is well settled that the settlement of a pauper is *prima facie* the place of birth, until another can be shown, acquired derivatively, or by acts of her own: *Wayne Township v. Jersey Shore*, 81* Pa. 264; *Overseers Toby v. Overseers Madison*, 44 Pa. St. 60; *In re Lunacy of Margaret Christy*, 2 Sup. Rep. 259. But, under the evidence in this case we think the pauper lost her derivative settlement in Northampton county and acquired one in Stroudsburg. She came to Stroudsburg in July, in 1893, and from that time down to the time of her removal she lived in Stroudsburg and East Stroudsburg. During all this time she made her own contracts for hire and received the money therefor, and supported herself. Her father, being dead, her mother appeared to have taken no interest in her, or exercised any control over her. She had no interest in her daughter's contracts, nor did she receive any of her daughter's wages. By her mother's acts and her own she became emancipated, and was compelled to earn her own living. The pauper acquired a settlement in Stroudsburg, by hiring and service there, and lost her derivative settlement in Northampton county. This she could: Poor District of

Hemlock Township v. Poor District of Shickshinny Borough, 6 Kulp, 169." ³⁸

The question relative to the settlement of the child was not raised in this case, presumably because the pauper was married to the father of the child soon after its birth, thus legitimating it for all purposes except that of settlement, as was held in *Jane Neil's Appeal*, 92 Pa. 193.

May Not Separate Wife From Husband. P. & L. Dig. 3538, § 115.

Act of 1836, Section 17. Provided, that it shall not be lawful, by virtue of any order of removal, to separate any wife from her husband.

Separation of Husband and Wife.

"Complaint was made in a petition, and not denied in the answer, that, by the failure and refusal of the overseers to provide for them, the wife was separated from her husband, and we are called upon to say whether or not such separation can be enforced. The language of the only act of assembly that we have been able to find upon the subject is as follows: 'It shall not be lawful by virtue of any order of removal to separate any wife from her husband.' This language seems to relate to orders of removal, requiring overseers to remove paupers from the district in which they may reside to the district of their last legal settlement. It seems also to specially relate to the wife and not to the husband. Because it can be readily seen how a wife might be able to support herself, and also her children, and not an invalid or worthless profligate husband. The husband is bound to support the wife, but the wife is not bound to support the husband, unless she is possessed of an estate of a clear competency. Her labor earnings cannot be apportioned and appropriated to such

³⁸ *Directors of Northampton County v. Stroudsburg Overseers*, Q. S. Monroe Co., July 18, 1898.

purpose, as can the husband's. Some courts have decided that a pauper husband may be separated from his wife, even against his wife's protest. Until the court of last resort so decides, we shall refuse to follow such decisions. No act of assembly can be found on our statute books that authorizes it. The common law declares against it, and the divine law given says that after marriage they are no longer twain, but one flesh, and what therefore God hath joined together let no man put asunder.

"Marriage is a civil contract between husband and wife to live together until death shall separate them. So long as such contract is entered into in conformity with our existing laws and not abrogated, or forfeited, by the crimes or conduct of the parties themselves, it would be a rank violation of our bill of rights to disregard or impair it. Suppose either husband or wife became blind or decrepit and pauperized, thereby the greater reason prevails for kind and true sympathetic aid, companionship and consolation. The marital rights of the worthy and unfortunate poor should be held as sacred as the rich, and equally guarded and respected as are other rights of paupers, such as citizenship, residence, voting and protection of person. It was therefore wrong and unlawful to separate this husband and wife. It may be answered that it was voluntary on the part of the pauper. The husband said it became necessary on account of the overseers' refusal to render aid, and in order to obtain food and shelter. To desist longer to separate was perhaps at the risk of starvation. Such duress on the part of the overseers was improper, and, under the circumstances and facts admitted in this case, unauthorized." ⁸⁹

"In another case the appellant alleges that the order of removal is in violation of the statute forbidding the separation of the wife from her husband. . . . It is sufficient to say, in answer to this objection, that the order of removal did not

⁸⁹ *Armstrong v. Berwick*, 10 Pa. C. C. R. 337.

separate the husband from the wife. It is true they were living together at the time the order was made, and the order provided only for the removal of the wife. There is nothing to show that either the husband or the wife objected to the order, on this ground, or that the husband did not, in point of fact accompany his wife. There was certainly nothing in the order to prevent his doing so." ⁴⁰

⁴⁰ *Cascade v. Lewis*, 148 Pa. 333.

CHAPTER XIV.

REFUSAL TO RECEIVE PAUPER.

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Refusing to Receive Pauper. P. & L. Dig. 3538, § 116.

Act of 1836, Section 18. It shall be the duty of the guardians or overseers of the city or district to which such poor person may be removed, by warrant or order as aforesaid, to receive such poor person, and if such guardian or overseer shall refuse or neglect so to do, he shall forfeit for every such offence the sum of twenty dollars, to be recovered as hereinafter provided, and applied to the use of the poor of the district from which such poor person may be removed as aforesaid.

This section is from the twenty-third section of the act of March 29, 1771.

Overseers are Bound to Obey Orders of Removal.

"Under the provisions of the act of 1836, a regular order of removal was made by two justices, finding that a pauper chargeable upon a township for temporary relief had not gained a legal settlement therein, and adjudging her last place of settlement to be an adjoining township, and commanding the overseers of said township to receive and provide for the pauper, which the overseers refused to do, and this without appeal from the order of removal. Held (reversing the court below) that the overseers had no right to refuse the pauper and that mandamus lies to enforce compliance with the order of removal.

"Held further, that overseers of the poor are officers elected within the meaning of the eighteenth section of the act of 1836, which gives the court of common pleas power to issue writs of mandamus to officers and magistrates elected or appointed in or for any township.

"The provision of the eighteenth section of the act of 1836, which prescribes a penalty for a refusal to receive a pauper under an order of removal, is not a remedy to enforce performance of the duty, but a punishment for its non-performance, and is not an adequate remedy, nor is it such a statutory remedy as is contemplated by the act of March 21, 1806, which forbids the use of a common-law remedy where one is provided by statute."¹

Act of April 15, 1867, Applied.**Costs and Charges.**

"James Wynn, a poor person, became chargeable to the Central poor district on September 20, 1887. On November 27, 1887, an order of removal was obtained, and he was taken to one of the directors of the defendant district. A copy of the order was delivered to the director. The latter refused to accept the pauper, and no appeal was taken from

¹ Overseers of Porter Township *v.* Overseers of Jersey Shore, 82 Pa. 275.

the order. In a day or two afterwards the pauper returned to the poor house of the plaintiff, where he remained until January 23, 1889, when in obedience to a peremptory mandamus awarded by the court of common pleas the directors of the defendant district took him away.

"Subsequently a bill of costs and charges, approved by two justices of the peace, was presented to the directors of the defendant district and payment thereof demanded, which was refused. The plaintiff then applied for and obtained this rule.

"Although the defendant at first refused to accept the pauper, yet, as he was finally accepted, the case comes within the act of April 15, 1867, P. L. 84, and the court has undoubted jurisdiction. The act reads as follows: 'It is the true intent and meaning of the existing laws of this commonwealth that the district so accepting said poor person shall be liable to the district removing said poor person for costs and charges in the same manner and to the same extent that they would have been had the case been determined against said district by the court of quarter sessions upon an appeal from said order of removal.'

"It is contended that while the defendant may be liable for the costs and charges which had accrued at the time of the first attempt to execute the order, they are not liable for the expenses of maintaining him between that time and the time when he was finally accepted. If the defendant district had accepted him, and then the pauper had voluntarily left its custody and returned to the plaintiff's poor house, the refusal to pay the subsequent expenses would have been perfectly justifiable both in morals and in law. But can they plead their own wrong in refusing to accept the pauper as a defence? We think not. There was a constructive removal when the order was served on them, but actual removal was rendered impracticable by the refusal of the defendant to obey the order. If by reason of the pauper's sickness actual removal had been prevented, a service of the order on the

defendant would have made it liable for the subsequent expenses: *Donegal v. Sugar Creek*, 10 Cent. Rep. 405; *In re Ross Poor District*, 3 Kulp. 198. We do not think the case is any too strong, where complete execution of the order of removal is prevented by the defendants' refusal to obey its mandate. In such a case the removing district is not bound to turn the pauper out while proceedings to compel the district adjudged to be his last legal settlement are dragging their slow length through the courts: *Sugar Loaf v. Schuylkill*, 44 Pa. 481. There it was held that where two orders of removal of an insane pauper were disobeyed by the directors of the district to which he was ordered to be removed, they refusing to receive him, the overseers of the township in which he became insane may, under Section 23. act of 1836, on complaint to the quarter sessions, recover the sum necessarily expended in maintaining him, although he was physically able to be removed. This conclusion was reached by a liberal construction of Section 23. The act of 1867, which makes the case still clearer, had not then been passed. Rule absolute." ²

Service of Order of Removal—What is Sufficient Notice.

"The petition of the overseers of the poor of Houston township, Clearfield county, sets forth that Maggie Coher became a charge upon the poor district of Houston township, and that, on May 25, 1888, an order of removal was granted for her removal to Jay township, Elk county, where it was alleged she had her last place of legal settlement. The allegation of the petition is that she was removed to Jay township and delivered to the overseers of the poor of that township, and that no appeal was taken from said order of removal and praying for an order on said overseers of Jay township to pay the costs and expense of her maintenance and re-

² *Central Poor District of Luzerne County v. Pittston and Jenkins Poor District*, 7 Luz. Leg. Reg. 196.

moval. The petition further prays for an order on said overseers of Jay to pay the costs and expenses of the maintenance and removal of Joseph Buskirk and wife, and Robert Clayton. There is no dispute in regard to the costs and expenses of the maintenance of Buskirk and wife and Robert Clayton. The controversy arises in regard to the costs and expenses attending the maintenance and removal of Maggie Coher. As there was no appeal from the order of removal, the question of the legal settlement of the pauper cannot arise if she was properly and legally removed, which is the matter in dispute. The order of removal was obtained on May 25, 1888, and was served on or about May 30 or 31, 1888, by leaving it at the store of Abel Gresh, one of the overseers of the poor of Jay township, with his clerk. The clerk testifies that Gresh was absent from home on the day the order of removal was left with him, but that he gave it to Gresh the next morning, which would be about June 1, 1888. On June 4, 1888, the overseers of the poor of Jay township addressed a letter to the overseers of the poor of Houston township, in which they acknowledged that the pauper had been removed to Jay township, but that they declined to receive her, on the ground that she had no legal settlement in Jay township. But the evidence of James Bowersox, one of the overseers of Houston township, shows that the pauper had just been confined and was in a critical condition, and it was necessary to provide a place for her as soon as possible, owing to the condition of her health; that he took her to her father's house in Jay township, expecting to have her cared for by her parents, but they were not at home and consequently was obliged to take her to a neighbor's house. We think that, under the circumstances, this is a sufficient compliance with the act of assembly, and that the township of Jay should pay the costs and expenses of the maintenance and removal of said Maggie Coher. Rule made absolute." ³

³ Houston Overseers v. Jay Overseers, 9 Pa. C. C. R. 412.

Appeal From Order of Removal. P. & L. Dig. 3538, § 117.

Act of 1836, Section 19. Provided always, That any person aggrieved by any such order of removal may appeal to the next court of quarter sessions for the county from which such poor person may be removed, and not elsewhere, and if there be any defect of form in such order, the said court shall cause the same to be amended, without cost to the party, and after such amendment, if the same be necessary, shall proceed to hear and determine the cause upon its truth and merits; but no such cause shall be proceeded in, unless reasonable notice shall have been given by the party appellant, to the overseers of the district from which the removal shall have been made, the reasonableness of which notices shall be determined by the said courts, at the session to which the appeal may be made, and if it shall appear to them that reasonable time was not given, they shall adjourn the appeal to their next session, and then determine the same.

The preceding section is from the twenty-third section of the act of March 29, 1771.

No intendment will be made against an order of removal, and the omission to state in an order of removal of a married woman, that her husband had no known settlement, will not render it defective.⁴

If an order made by two justices for the removal of a pauper is defective, in omitting to state that the person had or was likely to become chargeable, it is the duty of the quarter sessions, on appeal, to amend the same and proceed to try the case upon its merits; an order quashing such proceedings is erroneous.⁵

Where, prior to the order of removal, there had been an order of relief, it was conclusive evidence of the fact that the person had become chargeable; and where the justices failed to recite it in the order of removal, the court were bound to allow it to be so amended after the appeal.⁶

⁴ Reading v. Cumree, 5 Binn. 81.

⁵ Cumberland v. Jefferson, 25 Pa. 463. ⁶ Ib.

The appeal must be taken to the next court, whether notice of the order were given or not.⁷

An appeal from an order of removal of a pauper must be taken to the next court of quarter sessions after the order of removal is made, although the order is not actual but constructive only.⁸

When an order of removal is served on or prior to January 29, the appeal must be taken to the court of quarter sessions, which commences on February 4. An appeal to the April sessions is too late.⁹

If the justices have no jurisdiction, an appeal does not lie.¹⁰

There is no appeal from an order of maintenance.¹¹

A decision on appeal from an order of removal is conclusive upon a new township formed from one of the litigant townships.¹²

The court, on appeal, may confirm in part, and quash in part.¹³

No Appeal Lies From an Order Vacating One.

"On an appeal from an order of the court of quarter sessions, vacating an order for the removal of a pauper, made by two justices of the peace, accompanied by a certiorari to bring up the record. It is almost needless to say that in such a case no appeal can be taken to this court. The nineteenth section of the act of June 13, 1836, enacts that 'any person aggrieved by an order of removal made by magistrates may appeal to the next court of quarter sessions for the county from which such poor person may be removed and not elsewhere, and if there be any defect of form in such order, the said court shall cause the same to be amended without cost

⁷ *Sugar Creek v. Washington*, 62 P. S. R. 479.

⁸ *Walker Township Overseers v. Perry Directors*, 156 Pa. 426.

⁹ *Sugar Creek v. Washington*, 62 Pa. 480; *Cherry v. Marion*, 96 Pa. 532, cited.

¹⁰ *St. Clair v. Moon*, 6 W. & S. 522.

¹¹ *Lampiter v. Lancaster*, 2 Yeates, 164; *Tioga v. Lawrence*, 2 W. 43. 44.

¹² *Gibson v. Nicholson*, 2 S. & R. 422.

¹³ *Bucks v. Philadelphia*, 1 S. & R. 387.

to the party and after such amendment, if the same be necessary, shall proceed to hear and determine the cause upon its truth and merits.' The twenty-fourth section enacts that 'if any magistrate shall refuse to grant a warrant or order of removal as aforesaid (that is as described in the sixteenth section), it shall be lawful for the overseers aggrieved by such refusal to appeal to the next court of quarter sessions of the county in which such magistrates reside, who shall thereupon hear and finally determine the same.' And the forty-fourth section, that 'if any person shall be aggrieved by the judgment of any one or two magistrates in pursuance of this act, he may appeal to the next court of quarter sessions for the county in which such magistrates reside (except in cases herein especially provided for), whose decision in all such cases shall be final and conclusive.' It is manifest from these provisions that the statute contemplates no appeal to this court, and no hearing on the merits after they have been determined by the court of quarter sessions. And so it has been decided in *Mifflin township v. Elizabeth*, 18 Pa. 17, and in *Mauch Chunk v. Nescopeck*, 21 Pa. 49."¹⁴

Again, a pauper became chargeable on the township of Plunkett's Creek, Lycoming county, afterwards two justices of the peace granted an order to remove him to Fairfield township. Fairfield appealed to the court of quarter sessions. All the proceedings from the inception to the appeal were regular.

On the hearing before the court testimony was taken as to the fact of the pauper's settlement.

The court (Jordan, P. J.) held upon the testimony that the pauper had lost his settlement in Fairfield, but had not gained one in Plunkett's Creek township, and concluded his opinion thus:

"The pauper having become chargeable on Plunkett's Creek township, that township must find out the place where

¹⁴ *Bradford v. Goshen*, 57 Pa. 495.

the pauper was last legally settled, and from the testimony his settlement is in Loyalsock township, Lycoming county, or Pine township, Clinton county. In which of these it is not necessary now to determine. The order of removal is quashed with costs."

Upon this Plunkett's Creek township removed the proceedings by certiorari to the supreme court.

Strong, J., in delivering the opinion, said: "The effect of the judgment in the court below was to terminate the proceeding, but leave the parties as if no application for an order of removal had been made. This was not a direct disposition of the case. The proceedings before the magistrates were regular, and the appeal was taken in due season and form, the case was therefore before the courts on its merits, and both parties had a right to a final decision. But instead of this, the order of removal made by the magistrates was quashed. Very likely this was an inadvertence, but it was error: *West Buffalo township v. Walker Township*, 8 Pa. 177. Said Gibson, C. J.: 'Properly speaking, there are three modes of disposing of an order of removal in the quarter sessions. The first is to confirm it, and when that is done, it appears (*Rex v. Arencester*, Burr. Set. Ca. 18; *Rex v. Bently*, Ib. 426, and some other cases) that the order of the sessions is conclusive against the appealing parish in favor of all the world. The second is to discharge it; and when that is done, the adjudication is conclusive between the parties litigant. The third is to quash it; and when that is done, the order is conclusive on neither. An order of removal is confirmed after an unsuccessful objection to it for want of merits, or for want of form, or for want of regularity; it is discharged, or, as it is sometimes said, vacated, after a successful objection to it on the merits.' In *Overseers of Toby v. Overseers of Madison*, 44 Pa. 60, it was said that the judgments thus clearly marked out ought to be observed and followed. And it is plainly a matter of substance. The order of removal in this case should therefore have been confirmed or discharged.

"It has been argued that the court below intended to discharge the order of removal, and that we can correct the judgment by making such an order as was intended to be made. It may be that the wrong judgment was inadvertently entered, and that the court meant to vacate rather than to quash. But we cannot determine this without looking beyond the record. Confining ourselves to that, we have nothing more than the original order of removal, the appeal and the judgment that is to be quashed. Neither the evidence nor the opinion of the court is any part of the record, as we have decided at this term: *Overseers of Bradford Township v. Overseers of Goshen Township*, 57 Pa. 495, on the authority of previous decisions. We have then no other course to pursue than to reverse the order for quashing and send the case back to be proceeded in according to law." ¹⁵

"The order to quash is like a reversal on a writ of error, which leaves the parties where they began. Confusion in the use of these terms has led to a confusion of ideas to the principles they serve to embody. Though an order of removal has sometimes been carelessly said to have been quashed when it was discharged, the preceding distinctions were plainly taken by counsel and recognized by the court in *Rex v. Bradenham*, Burr. S. C. 394, where it was suggested that previous orders of removal, which appeared by the minutes of the sessions to have been discharged, had in truth been quashed for an apprehended mistake of form; but as the fact appeared to be doubtful on the affidavits, the court refused to remit them to the sessions to have the mistake rectified; and on a motion to quash the subsequent orders, the justices, Denison, Foster and Wilmot, in the absence of Chief Justice Ryder, held, that as the previous orders of removal appeared to have been 'quashed on the merits' (an inadvertent expression), the order of the sessions was conclusive between the parties to it. It is obvious that the word quashed

¹⁵ *Plunkett's Creek Township v. Fairfield Township*, 58 Pa. 209.

was used in this instance as equivalent of the word determined; for had it been quashed for matter of form, the effect would have been different from that which was given to it by the court. But in point of circumstance, that is not the case before us; for it appears by the record of the former proceeding that the order of removal was quashed by this court, not on its merits, but because the sessions had received parol evidence of the existence and contents of an indenture of apprenticeship, without having had sufficient proof of its loss or destruction, just as it would have been for an error apparent on the record, had the legislature directed the case to be brought up by certiorari and not by appeal. The order of confirmation was therefore right; but the court, thinking that our decision had settled the point of liability for costs and charges before the act was supposed to have given the parties a new status, allowed the appellee no more than the expenses incurred by keeping the pauper afterwards. As, however, it was inclusive, the appellee was entitled to charge as if the legislature had not interfered.”¹⁶

“The court may doubtless issue a certiorari to the court of quarter sessions for the purpose of bringing up the record; and may correct any error in the process, proceedings, judgments and decrees of such court; but it would be out of place and out of order to examine into the merits of the controversy upon facts; there is no mode provided in the law by which the facts can be legitimately before this court. The usual manner of bringing the facts before this court, in civil cases, on a writ of error, is by bill of exceptions in the court below, in which the evidence is stated and set out; and which bill is signed and sealed by the president of the court; and which becomes thereby part of, and is certified with the record. The charge of the court and instruction to the jury upon the evidence is made part of the record, by the same process of bill of exception, and both become examinable

¹⁶ *West Buffalo v. Walker Township*, 8 Pa. 181.

here, as part of the record. By the twenty-fifth section of the act of 1806, it is the duty of the court of common pleas, upon request of either party, to reduce their charge to writing, with their reasons therefor, and file the same of record in this cause; and in that way also, the opinion of the court becomes part of the record, and is certified with it; and anything apparent on it is assignable for error here. But neither the opinion of the court nor the evidence given in the quarter sessions compose any part of the record, nor can be made so by any form of proceeding pointed out by the law. Hence, it was determined, on a certiorari to remove the proceedings for the assessment of damages, that the supreme court will not examine into exceptions which depend upon depositions taken in the court below, relating to the assessment of damages: *Allison v. Delaware & Schuylkill Canal*, 5 Wharton, 482; *Overseers v. Overseers*, 7 Watts, 527. The late Judge Huston, in delivering the opinion of the court, says, 'Supposing the writ of certiorari does lie, yet the redress which we can give is confined to the regularity and legality of the proceedings. It does not extend to questions on the merits depending on facts not before us.' I know of no decision which overturns this.

"It was supposed that the case of *West Buffalo v. Walker Township*, 8 Pa. 177, gave some countenance to the examination of the merits and facts on a certiorari; but it does not. There the opinion of the chief justice was founded altogether upon the effect which quashing proceedings in this court, when the same cause was here before, had upon the rights of the parties; it was not held, that it did not preclude the party from instituting new proceedings: in those new proceedings an appeal was taken and also a certiorari; the certiorari was determined, as I have stated, and the appeal was allowed to proceed, and was determined in this court, and I suppose will be reported. If the party complaining here had any remedy, it was by appeal; because the error he alleges arises altogether on the facts, which cannot be before us on this proceeding.

I will not say that he has that remedy, because the forty-fourth section of the act of 1836 enacts, that if any person be aggrieved by the judgment of any one or more magistrates, in pursuance of this act, he may appeal to the court of quarter sessions for the county in which such magistrates reside, except in cases herein before specially provided for, whose decision, in all such cases, shall be final and conclusive. The exception obviously refers to cases in which no appeal is allowed, even to the sessions. The nineteenth section of the act gives no countenance to an appeal to this court, because it refers in terms to the court of quarter sessions, requiring them to determine appeals from justices of the peace, on their merits, and without regard to technical forms. But I will not say that an appeal does not lie, because they have been entertained; when the question is distinctly made before the court, it will be determined.”¹⁷

“There is a strong tendency in the act of 1836 to establish that the intent of the legislature in that act was to make the decision of the court of quarter sessions final and conclusive upon the question of the last legal settlement of a pauper; and there is at least one decision of this court (7 Watts, 527) which rules that on a certiorari to the quarter sessions, the revision of the supreme court, in a case arising under the poor laws, is confined to the regularity of the proceedings, and does not extend to the examination of the merits.

“The local court, before whom the witnesses are examined, and which is conversant with the manner of conducting the business of the county by the township officers, would, perhaps, be a very safe tribunal to decide upon the facts and merits in such cases finally. I know, however, that this court has often examined into the merits upon a certiorari in such cases, and I only mention the leaning of my own mind on the subject, with a view of stating that at any rate, it ought to be a clear and satisfactory case on the merits which would

¹⁷ Derry v. Brown, 13 Pa. 388.

induce this court to reverse the decision of the court below, etc., etc.”¹⁸

“An appeal to the supreme court never lies from the proceeding of an inferior jurisdiction, specially conferred by statute, unless an appeal be given. The certiorari lies for the purpose of correcting any error in their proceeding, and keeping them in the sphere prescribed by the statute. But the merits or facts of the controversy are not examinable in such proceeding. So that it was ruled in 7 Watts, 527, that the revision of the supreme court on a certiorari to the quarter sessions of the county, in a case arising under the poor laws, is confined to the regularity of the proceedings, and does not extend to an examination of the merits. And the reason is, as I will notice hereafter, that by the forty-fourth section, of the act of June 13, 1836, the decision of the quarter sessions on the merits is made final and conclusive. The appellant has shown no statute, nor any section of any statute, giving an appeal. I know of none. But he relied on the first section of the act of June 16, 1836, defining the jurisdiction of the courts, in which it is stated that the supreme court shall have power to hear and determine all manner of pleas, complaints and causes brought there from any other court of this commonwealth, by virtue of any writ or process issued by the said court, or any judge thereof, for that purpose, in the manner now practiced and allowed.

“This is a considerable stretch of ingenuity. But an appeal from the sessions is not brought here by virtue of any process or writ issued by this court, or any judge thereof, in the manner practiced and allowed at any time. That is one objection to the appeal, there is no mode or form prescribed of its getting here, or of the testimony being authenticated. It comes in like a strange and unbidden guest. But this section of the judiciary act relates to the ancient writs of error, certiorari or habeas corpus, by means whereof errors in law,

¹⁸ Shippen v. Gaines, 17 Pa. 38.

and not errors in fact, of inferior tribunals are corrected, according to the manner then practiced and allowed.

"The nineteenth section of the poor act of 1836 gives an appeal from the order of two justices removing and settling a pauper, to the next court of quarter sessions of the county, and not elsewhere. And the twentieth section, for the purpose, as it states, of preventing vexatious removal and frivolous appeals, enjoins it on the court of quarter sessions to impose such costs and charges as it deems reasonable and just, to be paid by the overseers or other persons against whom such appeal shall be determined, thereby showing that the matter was intended to be confided to the discretion and judgment of the court of quarter sessions. But the forty-fourth section, to remove all doubt or cavil from the subject-matter, provides that, 'If any person shall be aggrieved by the judgment of any one or more magistrates, in pursuance of this act, he may appeal to the next court of quarter sessions (except in cases hereinbefore especially provided for), whose decision in all such cases shall be final and conclusive.' The exceptions relate to some small matters in which the judgment of the magistrates is made conclusive.

"There is no right of appeal given to this court by the statute, and an express enactment that the judgment of the sessions shall be final and conclusive."¹⁰

"Notwithstanding the forty-fourth section of the act of June 13, 1836, relating to the support and employment of the poor, makes the decision of the quarter sessions on appeal in pauper cases final and conclusive, yet it settled that certiorari will lie to remove the proceedings, in such cases, into this court. It is a jurisdiction that was exercised under our poor laws prior to the act of 1836, notwithstanding similar restrictive clauses, and has been constantly exercised since that enactment. In the case of *Overseers of Derry v. Overseers of Brown*, 13 Pa. 389, it was ruled that proceedings in

¹⁰ *Miffin Township v. Elizabeth*, 18 Pa. 17.

pauper cases may be removed into this court by certiorari, to correct any error in the process, proceedings, judgments and decrees of the quarter sessions that may appear of record; but not to examine into the merits of the controversy upon facts. This, we apprehend, is giving the appropriate effect to the restrictive words of the forty-fourth section of the act of 1836. They were not intended to exclude the jurisdiction of this court as a court of review, but only to exclude a re-trial of the merits. Certiorari is a writ of common right, to be taken away not by implication but only by express words. Statutory restrictions, similar to that of the forty-fourth section, have been held not to take away the remedy by certiorari: *Rex v. Morley*, 2 Burr. 1040; *Rex v. Jukes*, 8 Term R. 544.

A certiorari to the quarter sessions after final judgment or order is equivalent to a writ of error to the common pleas, and the reason that it does not bring up the evidence like a writ of error, is because no statute has allowed bills of exception in the quarter sessions. The record in both cases is removed—in one with the evidence added by virtue of an act of assembly—in the other without the evidence, because the law has provided no mode for placing it on the record.

“But suppose the judge recites the evidence in his opinion, does that make it part of the record? In England the sessions state the case in questions of parochial settlement, and removal of paupers, and send it up to King’s Bench in answer to the certiorari. But this practice has never prevailed with us. We have no mode of verifying evidence except by bills of exception; and as this is not used in the quarter sessions, to allow the judge to send up whatever his discretion, taste, or caprice might dictate, would increase the proverbial uncertainties of the law, and involve us in an abortive attempt to administer justice to parties without the assurance that we had their real case before us. Nor does the judge help the matter by putting the facts into his opinion, for his opinion is no part of the record. And what is

to certify us that he has introduced all the facts in evidence; that the evidence was all competent and properly admitted, and that he did not exclude evidence that ought to have been admitted? A record that is not subject to the scrutiny of a bill of exceptions can never import verity on subjects like these. 'Granting a case,' by the justices in England, is not matter of duty but of discretion; though when they have stated it, mandamus lies to compel them to send it up: Chitty's Prac., Vol. 2, 381.

"If we were disposed to follow this analogy and entertain jurisdiction of such cases as the sessions should be pleased to state, the prohibitory clause of the forty-fourth section would be in our way; for that declares that the decisions of the quarter sessions on appeals shall be final and conclusive. And if these words, as we hold, exclude a re-trial of the merits, it matters not how accurately the judge states the case, we cannot pass upon it as an appellate tribunal without violating a positive statute. In a word, our common-law jurisdiction, though not taken away, is abridged by express legislation, and nothing but legislation equally express can remove the restriction.

"Nor will appeal lie; for this exists only where it is given by statute, as in proceedings in the orphans' court and final decrees in equity. Instead of being given by the act of 1836, appeal, which is in the nature of a new trial, is expressly denied. Except, therefore, as a court of error for the correction of errors of record, we have no jurisdiction in questions of settlement and removal under our poor laws; and the decisions of the quarter sessions as to the merits of such cases are 'final and conclusive.' " ²⁰

"This case comes before us on a certiorari, hence we can review that only which appears on the face of the record." ²¹

"The judgment of the quarter sessions in appeals from an

²⁰ *Mauch Chunk v. Nescopeck*, 21 Pa. 46, Woodward, J.

²¹ *Renovo Overseers v. Half Moon Overseers*, 78 Pa. 301, Gordon, J.

order for the removal of a pauper should always be in accordance with the rule laid down in *West Buffalo v. Walker Township*, 8 Pa. 180.”²²

The Appeal Must be to the Next Court of Quarter Sessions.

“The order for the removal of a pauper by Washington township was issued on March 27, A. D. 1868, and was served on the overseers of Sugar Creek township, on April 2, 1868. No appeal was entered from this order by the latter until December term of that year, notwithstanding not only one but two terms of the quarter sessions had intervened. The court below, at the instance of the defendants in error, quashed the appeal, and upon that decision this writ of error was issued.

“That it was not in time is most certain. The act of June 13, 1836, Section 19, expressly requires that the appeal by the party aggrieved by any order of removal shall be to the next court of quarter sessions after such order made: *Directors of the Poor of Westmoreland County v. Overseers of Conemaugh Township*, 34 Pa. 231; and this whether notice of the order was given or not: *Bradford Township v. Keating Township*, 27 Pa. 275.”²³

Appeal and Notice Thereof.

“The poor law relating to appeals from orders of removal is obscure and somewhat peculiar. A remarkable feature is that no special mode of appeal is provided. There must have been a motive for this on the part of the revisers, who were familiar with such proceedings, and have made provisions for appeals in other laws revised by them. Ordinarily an appeal is taken directly from and in the tribunal of judgment, and is a declaration made to it of an intention to be heard by a

²² *Toby v. Madison*, 44 Pa. 60.

²³ *Sugar Creek v. Washington*, 62 Pa. 479.

higher tribunal. As when Paul, a Roman citizen, said to Festus, 'I appeal unto Cæsar,' and Festus, having conferred with the council, said, 'Hast thou appealed unto Cæsar? unto Cæsar shalt thou go.' But in the present instance an examination of the proceeding and the nature and effect of the order of removal reveals features making a direct appeal from the magistrates often perplexing and inconvenient. The first feature is the want of any provision for a record by the magistrates. Complaint must be made (whether orally or in writing is not said), by the overseers of the district where the pauper has (or is likely to) become chargeable to a magistrate of the county. The magistrate takes to his assistance another magistrate of the county, but no provision is made for a notice, or for a hearing, or for the evidence, or a record to be kept by either or both of them. The hearing and the issuing of the warrant or order of removal would seem to be *ex parte*. The reason probably is that the removal may be to a distant place within or without the state, rendering notice difficult and dilatory, while prompt action may be necessary. The order of removal actually sets forth the complaint of the overseers that due proof of the settlement has been made, the judgment of the magistrates and the order to remove, and ends by directing the order or a true copy to be delivered to the overseers of the district to which removal is made, and requires them to receive the pauper. Then the eighteenth section of the act of June 13, 1836, requires the overseers of the district to which removal is made to receive the pauper under a penalty of \$20 for neglect or refusal. Under this proceeding the first notice the overseers of a district will probably have will be the delivery of the order and the pauper at the same time. Now it is obvious, from the want of any provision as to a record of the proceeding, or by whom it is to be kept, and of any mode or place of appeal defined, the overseers to whom the order and the pauper are delivered, when at a distance, must be at a great loss to know when, where and how to appeal. With such an order in their

hands, and ignorant of all else except what appears on its face, the only convenient and feasible mode of appeal to them would be to notify the overseers of the poor making the removal of their intention to appeal to the next court of quarter sessions. Indeed, that court appears to be the only tribunal where the trial of a controverted question of settlement can be had, there being no provision for a hearing before the magistrates.

"A proceeding, therefore, by notice to the overseers removing the pauper, and a petition to the court to be heard on appeal, seems to accord well with the *ex parte* character of the order of removal, and the want of a regular hearing and judgment of the magistrates between litigant parties. The nineteenth and twentieth sections of the act of 1836 also lend countenance to this view. The nineteenth does not say the appeal shall be taken from the judgment of the magistrates, but it says to the next court of quarter sessions, and it provides if there be any defect in form of such order of removal the court shall amend it, and then proceed to hear the cause on the merits, and then provides that no such cause shall be proceeded in unless reasonable notice shall have been given by the appellant to the overseers of the district from which the removal shall be made. The next section (twentieth) directs that 'the court of quarter sessions upon every appeal in case of settlement, or on proof being made before them of notice thereof as aforesaid (though the appeal be not afterwards prosecuted), shall at the same session order the party in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, such costs and charges as the said court shall consider reasonable and just to be paid by the overseers, or other person against whom such appeal shall be determined, or by the person who gave such notice.' Thus the section itself refers to the notice of appeal in the alternative, and as a mode of proceeding to take it, thereby strengthening the view that it may be taken not from the magistrates, but directly to the court. Now in view

of the *ex parte* proceeding before the magistrates, the want of any prescribed mode of appeal, the necessity of distant districts proceeding by notice, and coming into court at once by petition, and the evident recognition in the twentieth section of this mode of proceeding, we must declare this mode of appeal to be warranted by the act of 1836, and that the court below erred in striking off the appeal on the ground that no previous declaration of the appeal had been made to the magistrates. We do not mean to say that no record can be kept by the magistrates of their proceedings or that no appeal can be entered before them, but that the poor law recognizes an appeal by notice to the overseers making the removal and by petition to the court to be heard thereupon." ²⁴

Appeals nunc pro tunc.

The directors of Jenkin township, Pittston borough and Pittston township poor district, in the county of Luzerne, presented their petition, setting forth that they felt themselves aggrieved by an order made by two justices of the peace of the county of Monroe, for the removal of Matilda Fox, a poor person, from the township of Paradise, in said county of Monroe, to the borough of Pittston, in the county of Luzerne, dated September 19, 1888. That notice had been given by the petitioners to the overseers of Paradise township of their intention to appeal from said order of removal. That the said order of removal was served on the petitioners on Saturday, September 22, last past, about 5 o'clock P. M. That by reason of the shortness of time that elapsed between the service of the order and removal of the pauper, and the next session of this court, they did not have time to take their appeal to the next court of quarter sessions of the peace. That said Matilda Fox was not a settled inhabitant of the poor district to which she was removed, nor was said district

²⁴ Northampton v. Limestone, 68 Pa. 386.

legally chargeable with her support; with prayer that the appeal might be entered *nunc pro tunc*.

To the rule granted upon the overseers of Paradise they made answer that the order of removal was served on Saturday, September 22, at about 5 o'clock P. M., but that the petitioners had the whole of the next September court to enter their appeal, and, having failed to do so, had forfeited their right of appeal; and further, that the pauper had a legal settlement in the borough of Pittston; and prayed that the petition be dismissed with costs.

The September session of the court of quarter sessions of the peace of Monroe county commenced on Monday, September 24, 1888, and continued one week. The borough of Pittston is distant about sixty miles by railroad, from the county seat of Monroe county, and there are two or more daily trains between the two towns. . . .

Dreher, P. J.: "The act of 1836, Section 19, provides, 'any person aggrieved by such order of removal may appeal to the next court of quarter sessions for the county from which such poor person may be removed and not elsewhere.' The overseers of Pittston did not appeal to the next court of quarter sessions, and, therefore, by the very language of the statute, are not now entitled to an appeal. A number of cases, both in the quarter sessions and the supreme court, so rule, and, in *Sugar Creek v. Washington*, 62 Pa. 479, it was held that an agreement between the officers of the two districts could not change the law, as the rights of the public had intervened.

"We will not say that no case can possibly arise in which the circumstances or conditions would warrant the court in allowing an appeal after the first court; but, in the present case, though the time was short, the appellants had the whole of the week following the removal of the pauper in which to enter an appeal, and simply neglected to make the inquiry when the next court would commence. We think the appellants have failed to show such facts as will entitle them to enter an appeal.

"We more readily reject the application, because though the order of removal, unappealed from, is conclusive as between Paradise and Pittston, we do not think it is conclusive upon the latter as against any other poor district. It was stated, at argument, by counsel for appellants, that they did not claim that the pauper's settlement was in Paradise, but was in some other township in Luzerne county, but they feared the order of the justices unappealed from would conclude them.

"In *West Buffalo v. Parker*, 8 Pa. 177, it was said: 'In the court of quarter sessions an order of removal confirmed is conclusive against the appellant in favor of all the world; an order discharged is conclusive between the parties litigant; and an order quashed is conclusive on neither.' This, of course, has regard to an order of removal appealed from and an adjudication therein by the court of quarter sessions. There is no decision by any court in this state, so far as we are informed (and we have spent considerable time in searching the books), that an order unappealed from is conclusive upon the district to which the pauper is removed, as against any other than the district from which removed. Why should it be? The district officers not having time before the next term to become informed, as to the facts, may well hesitate to incur the expense of an appeal, and yet afterwards discover that the settlement of the pauper is in some other district. Such other district cannot complain. It was not a party to the former proceeding and certainly not concluded thereby; and why should not the general rule that only parties and their privies are concluded be applied to those cases of removal of poor persons, even where there is an appeal and the order of the justices is confirmed? I can see no good reason why the appellant district should be concluded against any other than the appellee. The appellant may show that the pauper is chargeable upon some other district, and, in such case, the order would be discharged, but such adjudication would not be conclusive upon the other district

as against either the appellant or appellee because not a party to the suit. But, however, this may be, we have, in the present case, no adjudication by the court of quarter sessions, and therefore it is not one to be controlled by the rule stated in *West Buffalo v. Walker*, *supra*, in cases of adjudication by the sessions in confirming an order of removal.

"We are sustained in this view by *Wilson, P. J., in Q. S. of Clarion county, Overseers of Piney Township v. Overseers of Sligo Borough*, 2 Pa. C. C. R. 134, where there was an order of removal, unappealed from, from Madison Township to Piney Township. Subsequently there was an order of removal from Piney to Sligo, from which there was no appeal. Piney then took a rule on Sligo for expenses paid in support of the pauper during the time elapsed between the two orders of removal. The court held that Piney must pay the expenses until the removal to Sligo. The judge, in course of his opinion, says: 'The fact has not been overlooked that Sligo was in no way affected by the order of removal taken by Madison to Piney, which is only conclusive on the parties, and that Sligo would not be entitled to plead that order in bar of an action by Piney against Sligo.'

The petition was dismissed.²⁵

Res adjudicata—Second Removal.

"In March, 1894, one Frederick Strawser, with his wife and three children, was living in Monroe township, Juniata county. As to the place of his birth, and where he had resided before this time, we are left practically in the dark. On November 6, 1894, through an order of relief, regularly issued by two justices of the peace, Strawser, together with his wife and children, became a charge on the poor district of Monroe township. On January 19, 1895, two justices of the peace of Monroe township granted an order for the removal of Strawser and his family to Susquehanna township, which

²⁵ *Jenkins Township v. Paradise Township*, 8 Pa. C. C. R. 164.

order was executed by the overseers of the former township on the thirtieth day of the same month. An appeal was then taken from this order of removal by the overseers of the poor district of Susquehanna township, and on March 12, 1895, the order was quashed for the reason that the justices had no power to grant an order removing a pauper from their own township to another: *Overseers of Washington v. Overseers of Beaver*, 3 W. & S. 548. The two districts were thus left where they began: *West Buffalo v. Walker Township*, 8 Pa. 177. But, as Monroe township refused and neglected to take back the pauper, the overseers of Susquehanna township, after an order of relief had fully issued, on April 26, 1895, obtained an order for their removal to Monroe township, and executed it on or about May 4, 1895. From this order the overseers of the latter township appealed.

"The court below properly confirmed the order of removal on the grounds that there was no evidence that the paupers had a settlement of any kind in Susquehanna township, while it clearly appeared that they had a *quasi* settlement in Monroe. If we felt called upon to fully re-try the case on the facts, we would be compelled to agree with the learned trial judge in all his findings; nor do we discover any error in his conclusions of law.

"We are asked, however, in case of affirmance of the decree to modify it by adding express words permitting a second removal of the paupers to Susquehanna, for the reason, alleged in the request, but denied by the appellees, that Strawser's derivative settlement is in Susquehanna. In other words, we are requested to formally announce, through our decree, that this litigation may be deemed only fairly begun at a point where a lawsuit usually ends, at the hearing in the court below, the appellants had the right to defend, on the ground that Strawser's settlement was in Susquehanna (*Overseers of Reading v. Overseers of Cumree*, 5 Binn. 81), and, if they had established that fact, their liability would have ended. It cannot be denied that they had ample time for preparation,

as the opinion of the court was not filed until nearly eight months after the taking of the appeal to the quarter sessions.

"Whether such a defence can be saved to furnish the main-spring for another proceeding, which could have been so easily avoided, is doubtful. It is enough to hold, however, that, as the decree is in proper form, and warranted by the law and the evidence, it needs no reformation. As to its ulterior effect on future litigation we may say, as was said regarding the same question in *Moreland Township v. Davidson Township*, 71 Pa. 371, 'we will leave this until it occurs.' " ²⁸

Decree affirmed.

Appeal From Order of Maintenance.

The question was, whether an appeal lies from orders of maintenance.

"The question is novel. In all our experience, either at bar or upon the bench, this is the first time this question has been raised in this court. We know not whether the absence of these cases was because none arise worthy of contest, or because it was regarded by the profession as settled that no appeal would lie. The question confronts us, and it must be met, perplexing as we confess it to be. It is insisted that the motion must prevail because our act of 1836 is very like the act of March 9, 1771, made perpetual by the act of March 25, 1782: 2 Dallas' Laws, 20. It was held, under this act that no appeal would lie to the sessions from an order of maintenance: *Overseers of the Poor of Lampeter v. Overseers of the Poor of Lancaster*, 2 Yeates, 164. Two justices of Lancaster county adjudged Gimper to be very poor, and that his settlement was in Lampeter, and directed the overseers of the poor of the said township to pay unto him sufficient for his maintenance. The overseers of the poor of Lampeter, considering this an order of removal, appealed.

²⁸ *Susquehanna Township v. Monroe Township*, 4 Sup. Ct. 589.

The court held it was an order of maintenance, good under the act of March 9, 1771, and that Lampeter was required to provide for the pauper until they get rid of him by an order of removal to his last place of settlement. The court further declared that 'what is said to be the common practice of appealing from order of maintenance is not justified by the law, but is highly erroneous.' This case is cited in *Overseers v. McCay*, 2 P. & W. 435, as authority to show that 'the order of maintenance is as well known as the order of removal, though the former is nowhere expressly directed by the act of March 9, 1771' (made perpetual by the act of March 25, 1782). Thus in *Milton v. Williamsport*, 9 Pa. 46, Burnside, J., says: 'Under any direction where an order for relief or maintenance is issued, the township on whom it is made is bound to support the pauper until they find the place of his last settlement.' From such an order there is no appeal: 2 Yeates, 164; 2 P. & W. 435. In *Summit Township Poor District v. Beyers*, 9 Cent. R. 523, decided on October 31 last, the point was made in the court below and the judge reserved it with the remark that he thought there was no appeal from an order of maintenance. The case went to the supreme court, but this point was unnoticed. These are all the authorities I have discovered which say that an appeal will not lie in such case. It must have been observed, from the citation of authorities already made, that the question arose and was decided in but one of them, 2 Yeates, 164. The authority of this case seemed accepted until the *Directors of the Poor v. Davis*, 2 Pittsburg, 36. In that case Church, J., said: 'If the certificate of relief granted by the justices in an emergency case be insufficient in form or substance, the nineteenth section of the special or local act of assembly left sufficient of the general law in force within the county to enable the directors to obtain a reversal on an appeal to the general sessions.' Then, in *Directors of the Poor v. Worthington*, 38 Pa. 163, an emergency case, Strong, J., said: 'The community is protected by our holding that there

is no liability to furnish relief without an order except in case of emergency, and that whether there was an emergency or not is to be determined by the magistrates when application is afterwards made to them for an order. If the magistrate errs the act of assembly provides a remedy by giving an appeal from his decision to the court of quarter sessions of the proper county.' This was approved by Mr. Justice Trunkey in *Blakeslee v. Directors of the Poor*, 102 Pa. 274. These are all the cases bearing upon the question that have come to my notice, after diligent search. In the cases cited, in which the right of appeal is upheld, no mention is made of the case in *2 Yeates*. It is fair to presume that the court had knowledge of its existence and the learned justices who delivered the opinions had experience in pauper cases at the bar and upon the bench in the inferior courts before their elevation to the supreme bench. In the perplexity created by the confusion in the cases, we turn to the acts of assembly. The ninth section of the act of 1771, reported in the act of June 13, 1836, forbids any to be entered on the poor book or to secure relief from the overseers without an order from two magistrates of the county, and declares that, if any overseer of the poor shall enter in the poor book or furnish relief without such order, he shall forfeit a sum equal to the amount or value given, unless such entry or relief shall be approved by two magistrates afterwards. There the authority is plainly given to the magistrates to issue an order of maintenance before the relief is furnished, or to issue an order of approval after it has been furnished. Then, the forty-fourth section of the act of 1836, which is a substantial re-enactment of the thirty-second section of the act of March 9, 1771, declares, 'If any person shall be aggrieved by the judgment of any one or more magistrates, in pursuance of this act, he may appeal to the next court of quarter sessions for the county in which said magistrate resides (except in cases hereinbefore specially provided for), when decisions in all such cases shall be final and conclusive.' The expression 'except in cases here-

inbefore provided for' means except in cases of removal and cases of poor persons chargeable in one place who legally settle in another. These are the cases in which an appeal is otherwise furnished for them by Section 44 of the act. Now, it cannot be said that a different appeal from an order of maintenance is provided for in other parts of the act, nor does the act prohibit such appeal. The language of the forty-fourth section of the act is comprehensive enough to include an appeal from an order of maintenance, and we hold that it is allowed by the express terms of the act. Many urgent reasons might be urged why there should be such an appeal, but the case does not turn upon the advantage to be derived from the right of appeal, but upon the naked question, whether the statutes provide for it.

"We hold, then, that an appeal will lie, and the motion to quash is overruled." ²⁷

Practice and Evidence Before Justices in Granting Order of Relief and Removal.

"The fact that a pauper was not examined in the presence of both justices of the peace who signed an order of removal, does not render the order invalid, nor does it invalidate the order, when in point of fact, one of the justices of the peace who granted it was also one of the directors of the poor asylum to which the order was directed.

"In this case the evidence established beyond a question, and without dispute, that the pauper was within the poor district composed of the townships of Auburn, Rush, Springville and Forest Lake. That she was about to become a mother and had no means to care for herself; that being in this condition she applied to Jeremiah Stevens, a justice of the peace, was duly sworn and testified to these facts, making it the duty of two justices to grant an order of relief in the form laid down in Burn's Justice, signed it, and procured the

²⁷ *Hower v. Lewisburg Poor District*, 6 Pa. C. C. R. 667.

signature of another justice of the peace, I. S. Lyman, Esq., to it, by informing him of the facts as sworn to by the pauper.

"This order of relief was delivered to the directors of the poor asylum. Esquire Stevens, before whom the complaint was made, and who was one of the justices who signed the order of relief, was also one of the directors of the poor asylum.

"An order of removal was in due form of law made to defendant poor district, which was the place of legal settlement of the pauper. The order of relief was lost, and evidence of its contents admitted.

"Upon argument the following questions were raised:

"First. There was not sufficient evidence given of the order of relief being lost to admit proof of its contents.

"Second. The parol proof shows that it was not properly granted, for the reasons: 1. That J. Stevens, Esq., one of the justices of the peace who granted the order of relief was also one of the directors of the poor asylum to which the order was directed. 2. That the pauper was not examined in the presence of both justices. The counsel for defendant also object that the order of removal appears upon its face to direct a removal by the directors of Auburn and Rush poor asylum, based upon what the evidence declares to have been an order of relief directed to 'Directors of the Poor of Rush and Auburn.'

"The evidence of the existence of an order of relief, its presentation to the directors of the poor asylum, and their acting under it by taking the pauper and affording the necessary relief is undisputed. There was also sufficient evidence of the loss of this order of relief to justify the admission of parol evidence of its contents.

"As to the alleged discrepancy in the name of plaintiff, as set forth in the order of removal and in the testimony of one of the witnesses, as to what was the title of the poor district in the order of relief, I regard it as entirely immaterial; the title if not correct could be amended.

"The objection to the order of relief rests entirely upon the alleged mistake of the justices who granted it in not listening together to the evidence upon which it was granted, and to the incompetency of one of the justices to grant the order.

"It is not, and could not be, disputed but what the pauper was for the time being chargeable upon the poor district, and that it was the duty of the two justices of the county, to whom the knowledge of the facts were properly brought, to issue an order of relief, and even if there had not been time for an order of relief to have been obtained, it was the duty of the directors of the poor asylum, under the facts established by the evidence in this case, to relieve the pauper, and as soon as possible obtain the order of relief.

"There is no charge of fraud upon the part of the justices who granted the order of relief, and the fact that the justices did not come together and hear the evidence of the pauper's necessitous condition, or that one of the justices was also a director of the poor asylum, did not vitiate the order of relief. Neither justice had any interest in the granting of the order, and the order of relief having been granted by two justices is conclusive of the fact that at the time the pauper therein named was entitled to maintenance as a pauper: *Overseers Laport Borough v. Overseers Hillsgrove Township*, 95 Pa. 269.

"The nineteenth section of the act of 1836 provides, upon an appeal from an order of removal, 'If there be any defect in form in such order the court shall cause the same to be amended without cost to the party, and after such amendment, if the same be necessary, shall proceed to hear and determine the cause upon its truth and merits.'

"This case, upon its merits, shows a pauper having a settlement in defendant district; becomes for the time chargeable to plaintiff district to furnish relief—which they do, and then in due form of law obtain an order of removal to defendant district.

"To set aside this order of removal upon the technical ob-

jections raised to the order of relief in this case would be to dispose of the case against its plain and undisputed truth and merit. We see no reason to change the affirmation of the order of removal." ²⁸

Competency of Witnesses and Evidence.

"To reverse this decree we must declare that the learned judge below erred in deciding as he did as to the credibility of the witnesses and the weight of the testimony. But the act which authorizes a writ of error, and which regulates our jurisdiction on appeal, does not contemplate a review of the conclusions of the court as to these matters. Exceptions are confined to 'any decision of the court upon any point of evidence or of law.' Act March 16, 1868, P. L. 46. 'A point of evidence cannot by any latitude of construction, be considered to mean whether the entire testimony makes out a case or proves the facts. It means, evidently, whether a witness offered is competent, or whether evidence offered is competent or relevant as tending to prove any fact material to the issue. A point of law is a question of law applicable to the facts as they may be found by the court, which the party may propose in the shape of a written point, and requires an answer.' *Lower Augusta v. Selinsgrove*, 64 Pa. 166. This construction has been uniformly followed in like cases: *Wayne Township v. Jersey Shore*, 81* Pa. 301; *Montoursville v. Fairfield*, 112 Pa. 99; *Overseers of Taylor v. Shenango*, 114 Pa. 394; *Cambria v. Madison*, 138 Pa. 109; *Kittanning v. Madison*, 146 Pa. 108. We have carefully examined the depositions, and are of opinion that there was competent and sufficient evidence, if believed, to sustain the findings of fact; and this is all that is necessary to be said concerning the first six assignments of error.

"These findings of fact clearly warranted the conclusion

* *Great Bend Township Poor District v. Auburn & Rush Poor Asylum*, 167 Pa. 254.

of law, which is the subject of the seventh assignment of error, and the decree entered pursuant thereto.

"The reasons assigned by the learned judge below amply justify his refusal to strike out the testimony of Isaac Frain as to the receipt for rent and the entries in Hazel's book, both of which had been destroyed by fire. It is not clear that the testimony as to the declarations of Hazel was not competent upon the principles recognized: *Hester v. Commonwealth*, 85 Pa. 139; *Zell v. Commonwealth*, 94 Pa. 258. But as this testimony was not taken into consideration by the court, it is unnecessary to discuss or decide the question.

"Assignments of error overruled and decree affirmed." ²⁹

The preceding cases were all decided under the nineteenth section of the act of 1836, but the passage of the act of March 16, 1868, has worked a radical change in the practice on appeals from orders of removals. We here insert the act in full, and refer the reader to the following cases for its construction:

Act of March 16, 1868, P. L. 46. P. & L. Dig. 3540, § 120.

An Act to authorize writs of error to the judgments of the courts of quarter sessions on appeals from the orders of removal of paupers.

Writ of Error to Judgment of Quarter Sessions.

Section 1. Be it enacted, etc., That upon the hearing and argument of all appeals before any court of quarter sessions, from the order of removal of paupers from one district to another, it shall be lawful for either of the parties to the issue to except to any decision of the court upon any point of evidence or of law, which exception shall be noted by the court and filed of record, as in civil cases, and a writ of error to the supreme court may be taken by either party to the judgment of the court with like effect as in civil cases; and in all cases now pending in the supreme court upon certiorari or appeal,

²⁹ *Overseers of Spring Township v. Overseers of Walker Township*, 1 Super. Ct. 383.

or both, to review the proceedings of any court of quarter sessions in any case of removal, as aforesaid, the same shall be heard as fully and with like effect as if the same had been regularly removed upon a writ of error heretofore authorized and issued: Provided, the said appeal or writ of error shall be taken within two years from final judgment of the court of quarter sessions in all cases hereafter to be tried.

“Under the act of March 16, 1868, which authorizes a writ of error to the judgment of a court of quarter sessions or appeals from an order for the removal of paupers, the supreme court can only hear and determine exceptions to any point of law or evidence, and not to conclusions upon the facts.

“Where the exceptions are not filed until two months after the argument of the case in the court below, and involve the whole case upon its merits, this court has no jurisdiction to review the case.”⁸⁰

Thompson, C. J.: “This case is before us on a writ of error to the quarter sessions of Sullivan county, under the provisions of the act of March 16, 1868, P. L. 46, which provides that ‘upon the hearing and argument of all appeals, before any court of quarter sessions, from the order of removal of paupers from one district to another, it shall be lawful for either of the parties to the issue to except to any decision of the court upon any point of evidence or law, which exception shall be noted by the court and filed of record, as in civil cases; and a writ of error to the supreme court may be taken by either party to the judgment of the court with like effect as in civil cases.’

“It may be well for the profession to notice this provision, for it changes the practice in pauper cases to be brought up for review materially. Formerly the practice was to bring the whole case up on appeal; the evidence and opinion of the court with the record. Now only such matters of law and fact as are excepted to on the hearing can come up. The

⁸⁰ Parker Township v. East Franklin Township, 13 W. N. C. 141.

matters of fact mean such, we presume, as are not properly evidence, or if evidence from which an erroneous conclusion is thought to have been deduced. The case in hand is sufficiently before the court under the act.”⁸¹

Res adjudicata and Mandamus.

“Upon authority of *Porter Township v. Jersey Shore*, 82 Pa. 275, and cases there cited, we hold that the order of removal was conclusive as between these poor districts until appealed from, and that mandamus is the appropriate remedy to enforce obedience to the order. We cannot in the present proceeding inquire into the question of settlement.

“Therefore, judgment is entered on the demurrer for the commonwealth with costs, and a peremptory writ of mandamus is awarded.”⁸²

“Appeals from orders of removal in proper cases are made to the quarter sessions of the proper county, whose decision is final. But under the act of March 16, 1868, either party at the hearing in the quarter sessions may except to any decision of the court upon any point of evidence or law, which exception shall then be noted and filed of record, and a writ of error may then be taken to the supreme court. We have neither writ of error nor bill of exceptions in this case.”⁸³

Writ quashed.

“Under the act of March 16, 1868, providing for writs of error to the quarter sessions in appeals from the orders of justices for the removal of paupers, the only subjects of review in the supreme court are regularity of the proceedings, and the decisions of the court below as to the admission or rejection of evidence, or upon the points submitted to which exceptions have been noted and filed.

“The supreme court has no power to consider an excep-

⁸¹ *Moreland & Davidson*, 71 Pa. 376.

⁸² *Commonwealth ex rel. v. Bohan et al.*, 5 Luz. Leg. Reg. 190.

⁸³ *Lewisburg v. West Buffalo*, 1 W. N. C. 209.

tion to an opinion of the court below, discussing the merits of the case, in which facts are stated and principles of law applied." ³⁴

No Appeal From Order to Refund.

"A motion is made to quash an appeal on the ground that the act of March 16, 1868, P. L. 46, providing for 'writs of error to the judgment of the courts of quarter sessions on appeals from the orders of removal of paupers' does not apply to decrees by the quarter sessions for the payment of money incurred in the maintenance and support of paupers removed. The provisions of the act of March 16, 1868, *supra*, are specific and refer only to 'appeals before any court of quarter sessions from the order of removal of paupers from one district to another.' They do not embrace proceedings for procuring the repayment of money expended for, or costs and charges incurred in the removal of paupers from one district to another. The question has been distinctly ruled, however, in *Directors of the Poor of Perry County v. Overseers of the Poor of Chillisquaque Township*, 110 Pa. 153, in which Mr. Justice Green, delivering the opinion of the court, says: 'To allow a writ of error in such a case we would be obliged to do so by implication only, contrary to the letter of the act which allows the writ, and when for aught that we know to the contrary, the legislature never intended to allow a writ. The order for costs and charges is certainly of a discretionary nature. It may well be that the legislature did not intend that a writ of error should lie to such an order. But it is enough for us to know that they have not given the writ in the act which imposes the liability and provides for a jurisdiction to determine it. (Referring to the act of April 15, 1867, P. L. 84.) We are unable to discover any necessary implication which requires us to give it in the face of the express legislation which gives it only in cases of appeals from

³⁴ *Elk v. Beaver*, 18 W. N. C. 438; 6 Pa. C. C. R. 562.

orders of removal, and we therefore feel obliged to quash the present writ.' Following the authority in this case, we are bound to hold that the appeal from the court of quarter sessions of Clarion county is unauthorized."⁸⁵

"A general exception to the decree of the court below, entered on an appeal from an order for the removal of a poor person, will not authorize the supreme court to review the case upon its merits. The power to review, in such cases, is confined to the questions raised upon exceptions sealed in the court below to its decision upon points 'of evidence or law' presented: Act of March 16, 1868, P. L. 46."⁸⁶

"Where, on an appeal from an order of the court of quarter sessions quashing an order for the removal of a pauper, the exceptions sealed do not relate to a decision on a point of evidence, and the facts as found rendered the points of law presented inapplicable, there is nothing on the record for the supreme court to review.

"A point of law is a question of law applicable to the facts as they may be found by the court, which the party may propose in the shape of a written point, and require an answer." Mr. Justice Sharswood, in *Lower Augusta v. Selinsgrove*, 64 Pa. 166. See *Cambria County v. Madison Township*, 138 Pa. 109.⁸⁷

"The right of appeal from the judgment or decree of the court of quarter sessions in the determination of appeals from orders of removal, in pursuance of which paupers have been removed from one district to another, is purely statutory. It is provided by the act of March 16, 1868. The remedy is to be pursued in strict accordance with the provisions of this act. The act has been construed and the mode of procedure under it carefully pointed out by the supreme court, whose decisions therein have been followed by this court in several cases. In *Lower Augusta v. Selinsgrove*, 64 Pa. 166, the

⁸⁵ *Green Township v. Highland Township*, 5 Sup. Ct. 199.

⁸⁶ *Cambria Co. v. Madison Township*, 138 Pa. 109.

⁸⁷ *Kittanning Township v. Madison Township*, 146 Pa. 108.

supreme court said: 'The general exception to the opinion of the court below is not an exception to any point of evidence or of law.' The provisions of this act of assembly have been construed by this court in *Spring Township v. Walker Township Overseers*, 1 Pa. Super. Ct. 383, and again in *Overseers of Elderton Borough v. Overseers of Plumcreek Township*, 2 Pa. Super. Ct. 397. In the latter case there was a general exception to appellants, and it was held that although the appellants' paper book contains seven assignments of error on questions of law and fact, none of them can be considered by this court, for the reason that there are no exceptions to support them.' In both of these cases the uniform decisions of the supreme court are fully collected and considered. It is not necessary, therefore, to requote the authorities at length. It is sufficient for the purpose of this case to say that, following the uniform decisions of both of our courts of appellate jurisdiction, we must hold that the thirteen assignments of error presented by the appellants for our consideration have nothing in the record which can sustain them. The court below was not asked to find specific facts, nor were any prayers offered for specific rulings upon points of law. No bills of exception were presented to the court, asking exceptions as to findings of fact or rulings of law by the court. The provisions of the act, under which the appeal was taken and the uniform and very numerous decisions of the courts in regard to the same were entirely disregarded. Although not necessary, it may be well to say that in our opinion there was competent and sufficient evidence in the case to sustain the conclusion reached by the court below."³⁸

Appellate Jurisdiction and Practice.

"If there is anything settled in this state, in regard to this class of cases it is that we cannot review them upon the

³⁸ *Overseers of Liberty Township, Centre County, v. Overseers of Castanea Township, Clinton County*, 4 Pa. Super. Ct. 411.

merits: *Cambria County v. Madison Township*, 138 Pa. 109. That we can review such cases only upon such points of evidence or of law as have been excepted to; and that a general exception to the opinion of the court is not an exception to a point of law or evidence: *Lower Augusta v. Selinsgrove*, 64 Pa. 166; *Moreland v. Davidson*, 71 Pa. 371. If the appellant desired to have its case reviewed here, the court below should have been called upon to answer specifically the points submitted. An unsatisfactory answer or a refusal to answer them, would have been equally the ground of exception; we cannot blame the learned judge below for not doing what he apparently was not asked to do.'

"In *Lower Augusta v. Selinsgrove*, 64 Pa. 166, it is said that 'a point of evidence cannot by any latitude of construction be considered to mean whether the entire testimony makes out the case or proves the facts. It means evidently whether a witness offered is competent, or whether evidence offered is competent or relevant as tending to prove any fact material to the issue. A point of law is a question of law applicable to the facts as they may be found by the court which the party may propose in the shape of a written point and require an answer.'

"This has been followed in all like cases in the supreme and this court: *Spring Township v. Walker Township*, 1 Pa. Super. Ct. 383; *In re Lunacy of Christy*, 2 Pa. Super. Ct. 259.

"The facts as found by the commissioner and the learned judge below are based upon ample evidence, and we cannot review them upon the merits."⁸⁹

"An appeal by the overseers of Plumcreek township from a decree of the court of quarter sessions of Armstrong county, affirming an order under which two paupers were removed from Elderton borough to Plumcreek township. Although

⁸⁹ *Poor District of the Borough of Edensburg v. Poor District of the Borough of Strattanville*, 5 Super. Ct. 516.

the appellants' paper book contains seven assignments of error on questions of law and fact, none of them can be considered by this court for the reason that there are no exceptions to support them.

"On appeals of this class of cases nothing but the record proper, and that which has been included in it in the manner prescribed by law, can be considered by this court. Prior to the act of March 16, 1868, the decision of the court of quarter sessions on the merits was conclusive, and could not be reviewed. It is true that the writ of certiorari remained as of common right, but that brought up the record only, and the appellate court was confined to a review of the regularity and legality of the proceedings; neither the evidence nor the opinion of the court formed any part of the record, and these could not be examined under that writ. The law furnished no mode by which the evidence or rulings of the court in those cases could be brought upon the record. The proceedings being out of the course of the common law, a writ of error would not lie, and none was given by statute; and for similar reasons no appeal could be taken. No bills of exception were allowed by enactment, and none could be obtained in these proceedings under the statute of Westminster. Thus the law stood before the act of 1868 went into effect. That act is as follows. (Cites act.)

"This statute allows a writ of error to the decision of the court of quarter sessions on points of evidence, or of law which have been specially excepted to and brought upon the record as directed. No other change is made in the law or practice with reference to this class of cases. Evidence and rulings of the court not thus made a matter of record remain, with the opinion beyond the reach of the appellate court, the same as if the act had not been passed; and there is no further legislation on the subject. It has, therefore, been uniformly held by the supreme court that in order to have any question of law or fact reviewed under this statute an exception to the ruling of the court below upon it as required by the statute

is essential: *Lower Augusta v. Selinsgrove*, 64 Pa. 166; *Moreland v. Davidson*, 71 Pa. 371; *Wayne v. Jersey Shore*, 81* Pa. 264; *Laporte v. Hillsgrove*, 95 Pa. 269; *Warsaw v. Knox*, 107 Pa. 301; *Montoursville v. Fairfield*, 112 Pa. 99; *Taylor v. Shenango*, 114 Pa. 394; *Cambria v. Madison*, 138 Pa. 109; *Kittanning v. Madison*, 146 Pa. 108; *Parker v. East Franklin*, 13 W. N. C. 141. The principle upon which this construction is based has been applied by this court in *Spring Township v. Walker Township*, 1 Pa. Super. Ct. 383.

"A like construction was given to the act of November 6, 1856, relating to trial for murder and voluntary manslaughter and has been rigidly adhered to in those cases (*Fife v. Commonwealth*, 29 Pa. 429; *Hopkins v. Commonwealth*, 50 Pa. 9), and a comparison of the provisions of the act of 1856 with those of the act of 1868 shows that they are substantially the same.

"In the court below requests for findings on points of evidence and of law were submitted on behalf of the appellants in this case, but it cannot be determined from the paper books whether these were answered apart from or in the opinion. The opinion concludes with the decree of the court, which is followed by an exception in these words: 'Eo die exception to appellants and bill sealed.' This is the only exception set out or noted in the appellants' paper book, and whether it is aimed at the points or the opinion, or the decree, is nowhere stated. But whether to one or to all it is equally unavailing under the authorities cited, to bring up the record for review any of the matters assigned for error. In *Kittanning v. Madison*, 146 Pa. 108, a bill of exceptions was sealed 'to the opinion and the refusal of points, so far as refused or qualified,' but this also was held insufficient and the supreme court affirmed the proceedings by simply saying: 'There is nothing in this case for us to review.'

"The practice governing these proceedings is plainly distinguishable from that in cases of appeals after trial by jury. By acts of assembly the points, answers and charges in those

cases are made a part of the record when regularly filed for that purpose, upon request, or on exception, or by direction of the court or trial judge, and thereupon they become subject to review by assignments: *Wheeler v. Winn*, 53 Pa. 122; *Janney v. Howard*, 150 Pa. 339; *Rosenthal v. Ehrlicher et al.*, 154 Pa. 396. Even in those cases bills of exceptions are still necessary to bring up for review all 'matters of evidence, the competency of witnesses,' and everything not included in the points, answers and charge of the court: *Connell v. O'Neil*, 154 Pa. 582; *Commonwealth ex rel. v. Arnold*, 161 Pa. 320.

"One thing common to all proceedings formerly reviewable on a writ of error is that appellate courts are confined to an examination of such matters as go to make up the record: they differ as to the subject-matter, and the mode of placing it there; unless otherwise directed by statute bills of exception must be used for the latter purpose. But each case is limited to the matter and to the mode prescribed for its class. In the present case 'any point of evidence or of law' may be reviewed when specifically excepted to, and not otherwise. No such exception appears.

"We may add, for the information of the appellants, that we have examined the alleged errors, *ex gratia*, and, upon a review of the whole case, we would not reverse for the reasons assigned, if they were properly before us." ⁴⁰

Presumption as to Finding of Facts by Court Below.

"In cases arising out of the removal of paupers the appellate court will presume that the findings of fact by the court of quarter sessions are correct, provided they are warranted by the evidence. This general rule is only departed from when manifest error has been committed.

"Self-contradiction by a witness affords no ground for re-

⁴⁰ *Overseers of Elderton Borough v. Overseers of Plumcreek Township*, 2 Super. Ct. 397.

jecting his testimony in toto; it is for the court below, in pauper removal cases, to determine the weight to be given to his testimony.”⁴¹

“The poor district of Green township, Forest county, secured on July 2, 1894, an order of removal directed to the overseers of the poor of Highland township, Clarion county, for the removal of John Waterson and family, who had become a charge upon the said township of Green. This order of removal was duly served upon the overseers of Highland township, August 22, 1894. No appeal was taken to the court of quarter sessions, as provided by the nineteenth section of the act of 1836. The overseers of the poor of Green township subsequently petitioned the court of quarter sessions of Clarion county for ‘a rule on said Highland township to refund to the said Green township the said amount (expended for relief of Waterson and family), or show cause why it does not do so.’ On March 15, 1897, the said court made the following decree: ‘After argument and upon due consideration of the testimony, rule absolute and it is adjudged, ordered and decreed that the poor district of Highland township, Clarion county, pay or cause to be paid unto the poor district of Green township, Forest county, Pa., the sum of \$355.79, with interest from this date, and with record costs,’ etc. From this decree an appeal was taken by the appellants to this court and the effort is made to secure a consideration of the questions which would have arisen if an appeal had been taken by the poor district of Highland township to the court of quarter sessions of Clarion county from the original order of removal. These questions could not have been considered by this court upon an appeal from the decree of the quarter sessions of Clarion county above recited, even if the appeal were authorized by law, inasmuch as an order of removal unappealed from is con-

⁴¹ *Overseers of Fermanagh Township v. Overseers of Milford Township*, 4 Pa. Super. Ct. 573.

clusive as to the settlement of the paupers removed and of the pertinent and material facts therein recited: *Directors of Westmoreland County v. Overseers of Conemaugh Township*, 34 Pa. 231; *Directors of Schuylkill v. Overseers of Montour*, 44 Pa. 484; *Sugar Creek Directors v. Washington Overseers*, 62 Pa. 479; *Directors of Blair County v. Overseers of Clarion Borough*, 91 Pa. 431.

"But a motion is made to quash this appeal on the ground that the act of March 16, 1868, P. L. 46, providing for 'writs of error to the judgment of the courts of quarter sessions on appeals from the orders of removal of paupers' does not apply to decrees by the quarter sessions for the payment of money incurred in the maintenance and support of paupers removed. The provisions of the act of March 16, 1868, *supra*, are specific and refer only to 'appeals before any court of quarter sessions from the order of removal of paupers from one district to another.' They do not embrace proceedings for securing the repayment of money expended for, or costs and charges incurred in the removal of paupers from one district to another. The question has been distinctly ruled, however, in *Directors of Perry County v. Overseers of Chillisquaque Township*, 110 Pa. 153, in which Mr. Justice Green, delivering the opinion of the court, says: 'To allow a writ of error in such a case we would be obliged to do so by implication only, contrary to the letter of the act which allows the writ, and when for aught that we know to the contrary, the legislature never intended to allow a writ. The order for costs and charges is certainly of a discretionary nature. It may well be that the legislature did not intend that a writ of error should lie to such an order. But it is enough for us to know that they have not given the writ in the act which imposes the liability and provides a jurisdiction to determine it. (Referring to the act of April 15, 1867, P. L. 84.) We are unable to discover any necessary implication which requires us to give it in the face of the express legislation which gives it only in cases of appeals from orders of re-

moval, and we therefore feel obliged to quash the present writ.' Following the authority of this case, we are bound to hold that the appeal from the court of quarter sessions of Clarion county is unauthorized." ⁴²

⁴² Poor District of Green Township, Forest County, *v.* Poor District of Highland Township, Clarion County, 5 Pa. Super. Ct. 199.

CHAPTER XV.

VEXATIOUS REMOVALS AND FRIVOLOUS APPEALS.

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To Prevent Vexatious Removals and Frivolous Appeals. P. & L. Dig. 3539, § 118.

Act of 1836, Section 20. For the more effectual preventing of vexatious removals and frivolous appeals, the court of quarter sessions, upon every appeal in a case of settlement or upon proof being made before them of notice thereof, as aforesaid (though the appeal be not afterwards prosecuted), shall at the same session order to the party in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, such costs and charges as the said court shall consider reasonable and just, to be paid by the overseers or other person against whom such appeal shall be determined, or by the person who gave such notice; and if the court shall determine in favor of the appellant, that such poor person was unduly removed, they shall at the same session, on demand, award to such appellant so much money as shall

appear to them to have been reasonably paid, by the city or district appellant, toward the relief of such poor person, between the time of such undue removal and the determination of such appeal, with costs, as aforesaid.

Duty of Overseers, Penalty for Neglect, Costs, Charges and Counsel Fees.

"In December, 1877, one Albert Rees and his family, consisting of a wife and six small children, being destitute, obtained an order of relief on the overseers of the poor of Moreland township, they then being residents of said township. The last place of legal settlement of the said paupers was and is Union township, Luzerne county, Pa.

"The overseers of Moreland furnished temporary relief to the paupers, and gave notice to the overseers of Union township, and that they, or one of them, promised to attend to the matter. Notwithstanding their promise so to do, the overseers of Union did not take the paupers away nor attempt to care for them in any manner.

"The order of relief under which the temporary relief was furnished was obtained December 4, 1877. After the overseers failed to take care of these paupers, to wit: December 20, 1877, an order of removal was obtained. The overseers of Moreland then intended to remove the paupers immediately to Union township, but one of the children being too sick, they could not do so. Afterwards, on February 7 and 8, 1878, the overseers of Moreland loaded up the family and took them to Union township, Luzerne county, arriving there in the evening. The overseers of Union township refused to receive the paupers, told the overseers of Moreland to take their 'damned trash' away and not leave them in the township. The overseers brought the family back to Moreland and cared for them.

"An appeal was taken by the overseers of the poor of Union township from the order of removal, and such proceedings were had thereon in the court of quarter sessions of

Lycoming county that, on September 6, 1879, the appeal was quashed.

"In the meantime proceedings were commenced by the overseers of Moreland against the overseers of Union for the penalty provided by law for refusing to receive the paupers.

"December 16, 1879, the overseers of Moreland took the paupers to Union township and delivered them to the overseers of the poor of that township, by whom they were then received and have since been kept.

"The bill of the overseers of Moreland for maintenance, costs and expenses was then filed in this court and a rule granted on the overseers of Union township to show cause why they should not pay the same. . . . We think the bill filed is fully sustained by the evidence, and that \$50 to the counsel of Moreland township is a reasonable allowance.

"The principal objection raised by the defendants to the payment of this bill is that, inasmuch as these paupers did not become chargeable by reason of having fallen sick, there is no authority of law to compel them to pay the bill. In other words, it appearing that these paupers became chargeable by reason of poverty, it was a duty of the overseers of Moreland to have removed them immediately, and failing to do so, they must stand the loss.

"The facts in this case are that, very shortly after these paupers become chargeable in Moreland township, notice was given to the overseers of Union, and they promised to attend to the matter; failing to keep their promise, the paupers were taken by the overseers of Moreland to Union township and offered to the overseers, who ought to have taken them, but who then refused to take them and forbade their being left in the township. Thus, by the unlawful act of these defendants the plaintiffs were compelled to convey this family of small children back to their township in midwinter, and, as was their duty, care for them. Notwithstanding it was the plain duty of the defendants to take and care for these paupers, they refused to take them, and they never offered

afterwards to take them or care for them. When the paupers were returned, December 16, 1879, the defendants accepted them.

"The plaintiffs performed their whole duty in the premises. The defendants cruelly refused to perform their plain duty, and by their default this bill of costs and expenses was incurred. Rule absolute."¹

Counsel Fees.

"The order of removal was discharged or vacated at the costs of the appellee, and it was further ordered 'that the appellee pay to the appellant, on demand, so much money as shall appear to have been paid by appellant towards the relief of the pauper since the time of his undue removal, together with reasonable costs and charges.'

"The appellant's bill was filed January 6, 1882, and contained, *inter alia*, three items of money due P. D. Bricker, appellant's counsel, for taking evidence, advice, etc., in the case amounting to \$230. The bill, excepting the charges of counsel, was amicably settled between the parties, and February 10, 1882, Mr. Bricker, by leave of court, filed an itemized account of his services and expenses in the case. The single

¹ Moreland Township v. Union Township, 6 Pa. C. C. R. 566.

NOTE BY REPORTER.—"The payment of costs and charges, as ordered by the above decree of court was enforced by mandamus in the court of quarter sessions of Luzerne county, when the merits of the same were discussed by Rice, P. J. See *Com. ex rel. Overseers of Moreland v. Overseers of Union*, 4 Kulp, 87; *Same v. Same*, *Ib.* 91; *Same v. Same*, *Ib.* 95. As to counsel fees, see *Milton v. Northumberland*, 4 Pa. C. C. R. 307, note; *Marion v. Spring*, 50 Pa. 308. The practice in Lycoming county, respecting the allowance of compensation for legal services under Section 20, of Act of 1836, was afterwards overruled by Cummin, P. J., in *Porter v. Jersey Shore*, the next case. Judge Cummin says that, before arriving at the conclusion to overturn what was theretofore an unquestioned rule of practice in the county, he wrote to all of the judges outside of Philadelphia and Pittsburg, and that nearly all of them assured him they had no such practice in their counties, and were of the opinion that counsel fees could not be legally allowed under the terms of the act."

question then arose as to whether the court could order the appellee to pay those charges.

"I am of opinion that there is no authority of law for allowing to the successful party in a pauper case any fees or expenses of counsel, and therefore such items in this case are disallowed." ²

Counsel Fees and Charges on Removal.

"The overseers of the poor of Jackson township, Columbia county, under an order, removed Henry Young, a pauper, to Jordan township, Lycoming county. The overseers of Jordan appealed. On May 28, 1889, the court made an order that the pauper be returned to Jackson.

"The overseers of Jordan filed their bill of costs and charges. It includes \$200 for counsel fees for Jordan in the proceeding. The whole demand, except the item of counsel fees, has been settled. That item is objected to on the ground that there is no warrant in the law to adjudge that the party cast in a proceeding of this kind shall pay counsel fees to the successful party; that if there is such authority, it ought to be exercised only where the losing party acted vexatiously or frivolously, and it is contended that no such conduct can be imputed to the overseers of Jackson. The twentieth section of the act of 1836 declares that (citing it). This is a reenactment of the act of March 19, 1771.

"If counsel fees are recoverable it must be on the ground that the word 'charges' include them. That such a claim does not come under the head of costs is plain. No decision of the question by the supreme court has been found. In *Porter v. Jersey Shore*, quarter sessions of Lycoming, decided in 1882, 6 Pa. C. C. R. 569, it was held there was no authority of law for allowing to the successful party in a pauper case for expenses of counsel. In *Lower Augusta v. Howard*, in the quarter sessions of Northumberland, decided Novem-

² *Porter Township v. Jersey Shore*, 6 Pa. C. C. R. 569.

ber 5, 1887, 4 Pa. C. C. R. 303, the court said that the words 'costs and charges' in the act of assembly do not necessarily include attorney's fees, but that it had been the uniform practice in that county, and in most, and perhaps all, the northern counties, to allow counsel fees as a proper item of charge, but that judges have been generally inclined to adopt a minimum; that it seemed to have been the intention of the legislature that the court should take into consideration all the circumstances and order such costs and charges as it should consider reasonable and just; that, where there was not reasonable cause, a court might be justified in making a very liberal order for costs and charges; that, in that case, it was not considered that the proceeding had been merely vexatious or frivolous, but that there was no ground for the appeal to the supreme court, and \$100 of the \$275 claimed would be allowed. In the same court, on the same day, in the case of *Milton v. Northumberland*, 4 Pa. C. C. R. 306, where \$100 was claimed as counsel fees, \$50 was allowed. In *Berwick v. Salem*, February Sessions, 1886, in this court, decided 1887, the court said that it had been the uniform practice in the northern counties of the state, for the last half-century, to allow counsel fees in the pauper causes as a part of the reasonable expenses and charges within the meaning of the act of 1836. The fee claimed and allowed was \$100. In *Centre District v. Beaver District*, also in this court, December Sessions, 1887, decided March, 1889, an order was made for the payment of a bill, upon approval of an order of removal, which included \$75 for counsel.

"It has never been regarded in this commonwealth sound policy to award to a victor in a lawsuit all his expenses. Said Judge Gibson (*Good v. Mylin*, 8 Pa. 54): 'No lawsuit is prosecuted without trouble and expense, and, were compensation for these recoverable as an original ground for action by anticipation, the claim would be a standing dish, and we should have a direct precedent for it in every trial. Because, it is a fallacy to suppose that every successful plaintiff has a

right to be made whole by a verdict, which is, at best, only an approximation to perfect justice. . . . To pay for expense and trouble, in order to make it valuable, would open a field of inquiry often more extensive than the issue raised by the pleadings, and make it the principal battle-ground. . . . Such a principle of compensation is contrary to the genius of the common law.' In trespass, where there has been fraud, outrage or oppression, the jury may in addition to compensation, award a sum as punishment of the defendant, but plaintiff's counsel fees cannot be included: *Stopp v. Smith*, 71 Pa. 285. The allowance of charges in pauper cases is one of the few exceptions to the rule. The purpose of the statutory provision is obvious. It was thought to be annoying, wasteful, unseemly and cruel to move the poor back and forth, unless the circumstances warranted such action. The object of the legislature was to discourage unnecessary contests of that kind. This could have been accomplished either by declaring that in every case the losing party shall pay all the costs and necessary charges of the other party, or, by providing that the court shall exercise a discretion founded upon the circumstances of each case. The latter view, evidently, was adopted, for the court is required not to ascertain what costs and charges are reasonable and just and to impose the whole, but to order to be paid such costs and charges as it shall consider reasonable and just—that is, of the expenses, so much as it is deemed to be right. If, in a case, the court should be of the opinion that the removal was vexatious or the appeal frivolous, all the necessary expenses of the prescribing party would be allowed. However, compensation only would be aimed at; nothing would be inflicted as a punishment. The property of the rate-payers would not be confiscated, because of the misfeasance of or malfeasance of their official representatives. On the other hand, if it was believed that the question of settlement was so close that nothing but an investigation according to law could have determined the point, but a small amount of the ex-

penses would be allowed, probably only the costs and no charges. It is likely that most cases coming before the courts fall between the two extremes. There reason and justice require that a portion of the expenses of the successful party be reimbursed.

"Exceptant's counsel contends that by 'charges' is meant compensation of overseers and others for examining into facts, taking proofs and the like. If that, then why not the expense of securing the services of counsel? The English and American law books prove that the poor laws have never been the simplest branch of the law. Legal advisers and advocates were, and are, needed in many cases where orders of removal and appeals are resorted to. Their compensation is a considerable if not the largest item of the expense. The argument which concedes that expenses not strictly costs are to be paid, also grants the liability for counsel fees.

"I am of the opinion that the act of 1836 means that the necessary counsel fees of the successful party shall be included in the costs and charges, and that the court shall award the whole expense, or so much thereof as is deemed to be just under the circumstances.

"The facts of the case being considered, I think it is right that Jordan shall be paid \$75 counsel fees."³

"The principal objection was to an item of \$275, charged for attorney's fees. . . . Ordinarily in litigation the unsuccessful party is not liable to pay the fees of the attorney for the other side. The words 'costs and charges' in the act of assembly do not necessarily include attorney's fees, and there has never been a decision of the supreme court, so far as I know, which holds that such fees are to be allowed in cases of this kind. It has, however, been the uniform practice in this, and, so far as I have been able to ascertain, in most, and perhaps all, of the northern counties, in pauper cases, to allow counsel fees as a proper item of charge, but the judges

³ *Jordan Overseers v. Jackson Overseers*, 8 Pa. C. C. R. 152.

have generally, in the exercise of their judgment as to what is reasonable, been inclined to adopt a minimum rule. In the case of *Scranton v. Danville*, my information is that Judge Elwell allowed \$100, and, although eminent counsel were engaged, no appeal was taken.

"It seems to me that in determining questions of this kind, it was the intention of the legislature that the courts should take into consideration all the circumstances. The object of the act is expressed 'for the more effectual preventing of vexatious removal and frivolous appeals,' and the court is to order such costs and charges as it shall consider reasonable and just. If the evidence shows an appeal taken, or an order of removal obtained without reasonable cause, perhaps a court would be justified in making a very liberal order for costs and charges to be paid by the party against whom the case was determined. In the present case I by no means consider the proceeding merely vexatious or frivolous. The pauper had no settlement in Lower Augusta township. From the best information the overseers of the poor could obtain, he had at one time a settlement in Howard township, and it was not known that he had ever lost it by obtaining another in another state until the evidence was taken by Howard township in the state of Colorado.

"However, after the evidence was taken and a decision of this court had, there was not, in my opinion, the slightest ground for an appeal to the supreme court. The pauper was comparatively a young man, and it was reasonable to suppose that he might live and be a public charge for many years. It was reasonable, therefore, that the poor district in which he fell a charge should exert itself in order to place the burden upon the proper district. I am of opinion that in this case the proceedings were commenced in good faith. The township of Howard was also right in resisting the removal, and the authorities were justified in expending the funds of the district in so doing, but it does not follow that Lower Augusta should pay all the expenses in what may be styled

honest litigation, commenced and carried on in good faith by the public servants of each district. I have come to the conclusion that \$100 for counsel fees, under the circumstances, would be a proper, reasonable and just item of charge."

In the case of *Milton Overseers v. Northumberland Overseers*, 4 Pa. C. C. R. 307, the same judge allowed the sum of \$50 for attorney's fees, saying: "The services of counsel in this case were not attended with as much labor as in the preceding case, which is the reason why the amount is fixed less. This is not, however, to indicate the amount that counsel are to charge their clients. They can charge their client whatever amount they can show their services have been reasonably worth." ⁴

The reporter, J. N. Hill, Esq., who was also one of the counsel in the foregoing case, adds a note which shows great research, and throws much light upon this section (Section 20), and we subjoin the same in full.

⁴ *Lower Augusta Overseers v. Howard Overseers*, 4 Pa. C. C. R. 303.

NOTE.—"The first clause only, of Section 20, of the act of 1836, is recited by the court in the above opinion in *Lower Augusta v. Howard*, counsel fees being recoverable under that clause alone. The second clause authorizes an award to the appellant, when successful, of 'so much money as shall appear to have been reasonably paid by the appellant towards the relief of the pauper.' The distinction between the two clauses is pointed out in *Huntingdon v. New Columbus*, 16 W. N. C. 237; s. c. 42 Leg. Int. 479; but becomes forcible by reference to the legislation from which they originated. The first is taken from 8 and 9 Wm. III, c. 30, s. 3, and the second from 9 Geo. I, c. 7, s. 9. Both claims would seem to require the award of costs and charges, and of money paid for relief, to be made at the same session at which the appeal is determined, not contemplating further appeal, certiorari, or writ of error. The words 'on demand,' are interpolated in the second clause, the supreme court having held that the award of money paid for relief need not be made until after demand, whether at the same session or later: *Williamsport v. Eldred*, 6 W. N. C. 188; *Relly v. Gregg*, 3 Cent. R. 560; *Huntingdon v. New Columbus*, supra. There is no reported decision of any case raising the same question under the first clause, or, at least, wherein the distinction was made. The practice in Northumberland county has been to make a general award under both clauses at the same

"What is meant by 'costs and charges as the court shall consider reasonable and just'? Does it mean anything more than legal costs, such as the per diem, and the mileage of witnesses and costs of subpoenaing the same, for the purpose of being examined before the court or to have their depositions taken, and such other items of charge as fall within the usual legal meaning and acceptance of the word

time. The English and Pennsylvania courts have applied a different rule of construction to this legislation. The former construe strictly, while the latter hold a liberal construction, treating it as remedial. *Reg. v. Long*, 1 Q. B. 740, decided that an order to pay costs which were taxed after the session, although approved by the court, could not be sustained, applying the same rule as in *Selvoon v. Morrut*, Ib. 726. The cases in Pennsylvania to the contrary are *Versailles v. Mifflin*, 10 Watts. 361; *Sugarloaf v. Schuylkill*, 44 Pa. 481; *Williamsport v. Eldred*, supra.; *Huntingdon v. New Columbus*, supra. There is no reported case in Pennsylvania or England touching the award of counsel fees. The word 'charges,' however, means more than costs (*Bouvier*), and is said to be radically identical with the word 'cargo,' a burden, etc.: *Webster*. It must be taken to mean any charge usually cast upon a district, without respect to statutory costs. Hence the allowance of counsel fees as part of the necessary charges of litigation. In *Renovo v. Half Moon*, 78 Pa. 301, a fee of \$25 had been allowed by the lower court, but no question was made in regard to it on certiorari. In England some of the sessions established a standing rule, the maximum of costs to be allowed in appeal cases, conceiving doubtless, that their discretionary power extended that far. The question coming before the Queen's Bench, however, in *Reg. v. Marionethshire*, 1 Car. H. & A. 277, a rule fixing 30 s. was held to be illegal, and the justices were admonished to take into consideration all the reasonable costs incurred. In ordering appeal cases, the practice in Northumberland and adjoining counties has been to allow \$10 as counsel fees against the losing party, and, sometimes, according to circumstances, a larger amount, as above, but without respect to the actual liability of the district to counsel. No appeal seems to have been taken from such an award. A writ of error would not lie, according to *Perry v. Chillisquaque*, 1 Cent. R. 401. Under *Walker v. West Buffalo*, 11 Pa. 95, however, an appeal may be taken; and, it would seem, where a sufficient sum for maintenance has not been allowed below, the supreme court will direct the taking of depositions, and award the full amount shown to be due.

"The court has no power to award costs under Section 20, of the act of 1836, where the appeal is quashed in part, and in part affirmed; nor where the appeal is dismissed for want of jurisdiction: *Bucks v. Philadelphia*, 1 S. & R. 387; *St. Clair v. Moon*, 6 W. & S. 522."

costs? If it embraces more than the limited signification, what shall be the limit? So far as the diligence of counsel, as well as our own examination goes, we have found no opinion of our supreme court on this question. The quarter sessions courts are not of the same opinion, and no uniform practice seems to prevail. Plausible reasons can be adduced for the enlargement of the scope and meaning of the words 'costs and charges' so as to embrace counsel fees, time of poor directors, expenses of poor directors, and almost everything, while equally cogent reasons can be given for limiting and restricting the effect of these words within a narrow compass and as applying to a very few items.

"We are of the opinion, from the whole context and subject-matter, that the statute is to be construed so as to make these words apply only to legal costs of witnesses, services of subpœnas, return expenses of pauper by the successful party, costs on depositions, and costs arising on the successful prosecution of the appeal, to which the party would be entitled in any other successful litigation. Costs are of statutory creation. No costs were recoverable by either the plaintiff or the defendants at common law. They were first given to the plaintiff by the statute of Gloucester, 6 Edward I, Chapter 1, which has been substantially adopted in all the United States. The statutes are in the nature of awarding damages against the unsuccessful litigant, and such statutes are to be strictly construed. In *Commonwealth v. Tilghman*, 4 S. & R. 129, Gibson, J., says: 'I grant that the statute imposing costs is penal in its nature, and must be construed strictly.' Again, in *Ramsey v. Alexander*, 5 S. & R. 338-343, Gibson, J., says: 'A statute imposing costs, where none existed before, is to be taken strictly because costs are not only an indemnification to the successful party, but are also in the nature of a penalty on the party failing in the cause.' The fees or charges of counsel employed in the case have never been classed as costs or allowed to the successful party in the state, unless, indeed, it is permissible in the class of costs

now under consideration. I am of the opinion that the words 'costs and charges' do not impart any compensation dissimilar in character to that of costs in the legal acceptance and understanding of the term, and therefore sustain the exception to this item of the demand.

"The same reasoning applies with equal force to the items of overseers' time, as well as the expenses incurred in hunting for evidence. If it be once admitted that these items may be assessed, the limit to the amount, the means of controlling the amount, and the reasonableness of the amount in any case is without any method of control, save the discretion of the sitting judge to whom the claim may be presented. In no class of litigation are similar items allowed as costs, unless it be the docket attorney fee in which \$3 is taxed under statute provision. We can see no greater reasons for allowing these items, under the word 'charges' than to allow them to persons suing in their individual capacity."⁵

"May 8, 1882, an order of relief issued by two justices of the peace of the borough of Shickshinny, directed to the overseers of the poor of the same. December 6, 1882, an order of removal to Ross township. December 18, 1882, order of removal served on the overseers of Ross township. January 22, 1883, petition for appeal, reciting order of removal, and the same day appeal allowed and directed to be filed. July 31, 1883, Garner Hendershot, the pauper, died, not having been actually removed to Ross township, owing to the fact as found by the auditor, that he was too ill to be removed under the order. September 17, 1883, order by Judge Woodward, after hearing, confirming the order of removal and dismissing the appeal. The decree concludes as follows: 'And it is ordered and decreed that Ross township poor district shall pay to the overseers of the poor of Shickshinny borough their reasonable costs and expenses in the case,' etc.

"The court then cites Section 20 of the act of 1836, in

⁵ *Madison Overseers v. Cambria County Poor Directors*, 9 Pa. C. C. R. 435.

reference to vexatious removals and frivolous appeals: 'The first question which suggests itself is, whether, upon the confirmation of an order of removal the appellant is chargeable with the necessary expenditures of the appellee for the relief and maintenance of the pauper prior to the order of removal, there being no laches or unnecessary delay by the appellee in obtaining such order?' The auditor answers this question in the affirmative. His conclusion is amply sustained by the reasons given in his report, and by authority: *Tioga v. Lawrence*, 2 W. 43; *Milton v. Williamsport*, 9 Pa. 46-48; *Walker v. Buffalo*, 11 Pa. 95.

"Is the appellant liable to the appellee for similar expenditures, and for the cost of the burial of the pauper after the order of removal? In this case the order was almost immediately served on the poor directors of Ross, and thus they had no notice. So far as appears they did nothing and made no offer to do anything for the pauper's relief, but instead took an appeal. The auditor has reported, upon sufficient and satisfactory evidence, that he was too ill to be removed. What then were the poor directors of Shickshinny to do? They could not, under the law, refuse to maintain him, nor, for reasons given, could they actually remove him. Clearly they were bound to continue their relief until he could be removed: *Kelly v. Union*, 5 W. & S. 535. And upon the determination of the appeal in their favor, were entitled to demand reimbursement from the appealing district. Charges for the maintenance and burial of the pauper, under such circumstances, are undoubtedly 'reasonable and just' in their character, and thus the case is brought directly within the letter as well as the spirit of the law." ⁶

Validity of Order—Res Adjudicata.

"Is it competent in this supplementary proceeding to question the validity of the order of removal? Clearly not, unless

⁶ In re Ross Poor District, 3 Luz. Leg. Reg. 198.

we deny the familiar principle that an adjudication by a court of competent jurisdiction between the same parties is an end of controversy as to the question adjudicated, and as to all matters essential to the adjudication. The decree of September 17, 1883, until reversed or set aside, is a conclusive adjudication between these parties: First, that the pauper was, at the time of the order of removal, a charge on the borough of Shickshinny; second, that Ross township was his last legal settlement; third, that the order was issued upon the application of the proper officers; fourth, that the justices who signed the order had jurisdiction of the application and performed every duty essential to the validity of their action.

"The effect of the order of relief as an instrument of evidence was not especially to prove the fact that Garner Hendershot had become legally chargeable as a pauper upon Shickshinny borough—for this fact was established by the adjudication referred to—but rather to fix the time when he became so chargeable. It is in due form, purports to be signed by two justices of the peace of the borough, and is the order under which the overseers acted in furnishing relief. There is reason for holding that a justice of the peace is incompetent, on the ground of intent, to join in an order of removal of a pauper from his own township to another: *McVeytown v. Union*, 5 W. & S. 434. But no such reason applies to an order of relief, and there is nothing in the language of the act to prevent a justice of the borough or township to be effected from issuing such order. There was, however, no express proof of handwriting of the justices, or of their official character. The latter fact seems, under the authorities, to be a matter of which the court will take judicial notice: *Hibbs v. Blair*, 14 Pa. 413; *Fox v. Com.*, 81* Pa. 511, and see also *Kilpatrick v. Com.*, 31 Pa. 210, 211.

"The auditor reports that G. W. Miller and Samuel Carwood were the *de facto* overseers of the poor of the borough for the year 1882, and that therefore the money expended and debts contracted by them in this behalf, so far as the ex-

penditures are reasonable, are legitimate charges against the appellant. This finding of fact is excepted to, but we think it is fully sustained by the evidence.

"Bill of costs and charges approved, and decree that appellants pay the same to appellees." ⁷

Jurisdiction as to Costs and Charges.

"Where no appeal is taken from an order of removal, the jurisdiction to enforce the liability for costs and charges is in the court of quarter sessions of the county of the accepting district.

"But where the court of the county from which the order of removal issued requires jurisdiction of an appeal, it also has jurisdiction, upon determination of the appeal, to award reasonable costs and charges; and it is not material how the appeal was determined, whether upon the merits, or for failure to prosecute, or for some other cause.

"It is not a fatal objection that the order for costs, etc., was not made at the same sessions when the appeal was determined." ⁸

Res Adjudicata—Costs and Charges—Mandamus.

"When an appeal is taken from an order of removal to the court of the county from which the order issued, and, after notice and hearing, is quashed because not taken and entered in time, such adjudication is a conclusive determination of the controversy as between those parties, and the court making the adjudication has the same authority to award reasonable costs and charges that it would have if the appeal had been determined against the appellants on the merits.

"It was argued that the jurisdiction conferred upon the court by the first clause of Section 20, act of 1836, was only to order the payment of reasonable costs and charges, and

⁷ In re Ross Poor District, 3 Luz. Leg. Reg. 198.

⁸ Moreland v. Union, 4 Luz. Leg. Reg. 95.

that these terms do not include expenses incurred for the relief of the poor persons. We do not think this construction is warranted by the decisions. The act of 1867 (P. L. 84) provides that the district accepting shall be liable to the district removing the poor persons for costs and charges in the same manner and to the same extent that they would have been had the case been determined against said district on appeal. In *Blair v. Clarion*, 91 Pa. 431, this act was held to warrant an order for the payment of the expenses incurred by the removing district for relieving as well as removing the pauper. If the terms costs and charges have this meaning in the act of 1867, what substantial reason is there for giving them a more restricted meaning in the act of 1836? True, it is held that where no appeal is taken the jurisdiction to enforce this liability of the accepting district is in the court of the county to which it belongs: *Williamsport v. Guardians*, 7 W. N. C. 222; *Blair v. Clarion*, 91 Pa. 431; *Directors v. Overseers*, 42 Leg. Int. 512. But that does not affect the applicability of the above decision as a construction of the terms costs and charges where an appeal is taken. We refer also to *Walker Township v. West Buffalo*, 11 Pa. 95, where, as it seems to us, this point was argued and directly decided. As the case was three times before the supreme court we will be justified in briefly summarizing the facts pertinent to the present question. There, as here, the districts were in different counties. The appeal was to the court of the county from which the order issued. Upon determination of the appeal by the confirmation of the order of removal, the same court awarded to the appellees the full amount of their bill of expenses and charges for keeping and maintaining the pauper. The only authority for this order was the first clause of Section 20 of the act of 1836, and then, as now, it was argued that the appellee could recover no more than her reasonable costs and charges in prosecuting the appeal, since the order of removal. The court said: 'The argument of counsel goes against the legality of the claim. We

think the claim just and in accordance with the act of 1836, and the unbroken practice and decisions of this court.' We are not aware that this decision has been questioned in any reported case. But, further, we think the question, so far as this case is concerned, is *res adjudicata*. The court of Lycoming having jurisdiction, as we have shown, to award reasonable costs and charges, it was for that court to determine what expenditures would come under that head, and to decide as to their reasonableness. . . . So long as its judgment remains unopened and unreversed, it is conclusive in every collateral proceeding. Judgment is entered for the commonwealth on the demurrer, with costs and a writ of peremptory mandamus is awarded as prayed for." ⁹

Prompt Notice of Intention of Removal Required to Recover Costs, Etc.

"The question was whether the defendant can be made to pay the costs of maintaining the pauper prior to the order of removal. In considering this question, it is to be observed that there is no evidence that the plaintiff gave any notice to the defendant prior to the service of the order, or that the plaintiff was ignorant of the pauper's alleged settlement in the defendant district, or that the pauper's physical condition was such that he could not have been safely removed shortly after he was first received in plaintiffs' poor house. It is the duty of overseers to furnish relief to every poor person within the district, not having a settlement therein, who shall apply to them for relief until such person can be removed to the place of his settlement. Reasonable time must be allowed the relieving district to ascertain the place of settlement, and expenditures made in the meantime can unquestionably be recovered: In re Ross Poor District, 3 Kulp, 298, and cases cited. But the relieving district is bound to exercise due diligence. Its overseers cannot delay indefinitely to

⁹ Moreland v. Union, 4 Luz. Leg. Reg. 95.

take out an order of removal or give notice, and then come upon the district alleged to be the place of settlement for past support. Every reason exists for holding that the former district must act promptly; while the order of removal is conclusive between the parties named in it, it is not conclusive as to other parties. Prompt notice and removal may enable the district sought to be charged by the order to obtain the evidence to relieve it from liability which would be lost by delay. Here there was a delay of twenty months before the order of removal was asked for. The pauper might have been removed at any time after the first two months at the outside. No reason is given for not removing him. Furthermore, he was not a continuous charge on the defendant district, but there was a break from May 10 until June 22, 1888, during which time he appears to have been able to take care of himself. It may be said that the directors of the plaintiff district did not know his place of settlement. There is no evidence to that effect, and in view of the extraordinary delay, it was incumbent on them to show that they had at least made some effort to ascertain the fact. In view of all the circumstances, we think that all the plaintiff district can reasonably and justly ask is to be allowed for maintaining the pauper the first two months of his stay at their poor house and for the period following his return on June 22, 1888, until January 23, 1889.”¹⁰

Measure of Diligence to Secure Removal—Attorney's Fees. :

“Poor persons in need of public charity must be temporarily provided for by the district of their residence; but this obligation ceases as soon as such poor persons can be removed to their places of settlement, and unless they be promptly removed and notice given to the authorities of the district chargeable with their permanent support, such tem-

¹⁰ Central Poor District of Luzerne County *v.* Pittston & Jenkins Poor District, 5 Luz. Reg. 504.

porary charges cannot be enforced against district in which such persons are legally settled.

"Where overseers make no effort to find the true place of settlement of a pauper for over a year after an order of relief has been granted, they are guilty of such negligence as will disqualify them from demanding reimbursement for the expenses of maintaining the pauper.

"A reasonable allowance for attorney's fees in poor law cases is proper." ¹¹ (See note in original report of this case.)

Charges for Care and Funeral Expenses and Attorney's Fee.'

"Mrs. Barrett had gained a legal settlement in the township of Jenkins, part of the defendant district, and the defendants recognized their obligation to provide for her by maintaining her in their poor house at different times, by directing her body to be brought to the district for burial and paying for the coffin. The poor person went out of her own district but a very few days before she fell ill. It is quite evident that in the interval between leaving the poor house and going to Wood's she was wandering aimlessly about the country. If not a legal duty it was certainly an act of charity on the part of Mr. Wood to take this unfortunate old woman into his home and provide for her. Unless the stern mandate of the law forbids the court will not say that he did a wrong in providing for her and now asking to be properly compensated therefor.

"Under the evidence Mrs. Barrett had not gained a settlement in Ransom township. She came out of the defendants' district and suddenly fell sick and died at the house of Mr. Wood. She could not have been removed. Her condition was evidently too serious to do more than permit her to die in peace. Notice was promptly given to the defendant of the name, circumstances and condition and death of the poor

¹¹ Lawrence Township, Clearfield County, v. Overseers of Tioga County, 12 Pa. C. C. R. 305.

person. The defendants, on request made, have neglected and refused to pay the moneys expended in maintaining and burying the poor person. The only question, therefore, which remains to be decided is, what expenses should the defendant pay. A bill amounting to \$48.30 was allowed and included attorney's services.

"The counsel fees were allowed for the reason that it was at the request of the defendant the Wood bill was contested, and because it was agreed by the parties, plaintiff and defendant, that the defendant would retain counsel to contest the said claim or payment selected by plaintiff." ¹²

Expenses of Maintenance and Costs of Removal.

"The contention is that costs are purely statutory, and there is no statute providing for costs where a pauper has been accepted without an order of removal and therefore, they cannot be allowed. The twenty-third section of the act of 1836 provides for the collection of costs where the pauper cannot be removed; the twentieth section of the same act provides for costs on appeal from an order of removal. In *Overseers of Sugarloaf v. Directors of Schuylkill County*, 44 Pa. 483, the pauper was actually removed under an order which was not appealed from by the district to which he was removed; but it refused to receive the pauper and provide for him, and it was held that, although the case was not within the letter of the statute, yet it was within the spirit, and payment of costs and expenses was compelled. In that case Mr. Justice Woodward said: 'Had Schuylkill appealed from the order of removal (Sugarloaf could not, for it was in her favor) the quarter sessions would have had jurisdiction to allow costs and charges, and we do not greatly wrest the statute from its letter and not a whit from its spirit by allowing it to sustain the present proceedings.' So, too, in the

¹² *Ransom Township Poor District v. Jenkins Township et al. Poor District*, 8 Luz. Leg. Reg. 223.

case of *Versailles v. Mifflin*, 10 Watts, 360, was not within the twenty-third section of the act, yet the supreme court held it within the equity of the act and supported the jurisdiction of the sessions.

"The difficulty suggested in *Overseers of Sugarloaf v. Overseers of Schuylkill County* doubtless inspired the passage of the act of April 15, 1867, P. L. 84, which provides that a district accepting a pauper removed under an order is liable for costs. If there had been an order of removal here the case would fall within the very language of the act, and the jurisdiction of the sessions would be undoubted: *Directors of the Poor of Bedford County v. Overseers of the Poor of Licking Creek Township*, 2 Ches. Co. R. 310. The case in hand differs but in one respect from the latter; here there was no order of removal; there would have been one, however, if the overseers of Union had done voluntarily that which they would have been compelled to do by law. Then why should Union escape the voluntary assumption of the liability which the law casts upon it, if it had been unwilling? The settlement of the pauper is undeniably there, and the law casts upon Union the burden of maintaining them. It accepted them and removed them without an order, and this saved the expense of procuring one. The acceptance of the paupers thus was the same as if there had been an order of removal, and we are justified in holding that Union cannot escape liability for costs upon the ground that there was no order of removal.

"To hold otherwise would be contrary to all equity. It would greatly increase litigation and impose unreasonable burdens upon districts, if the overseers of a district, in order to recover costs and charges, were always compelled to take out an order and remove the pauper to his last place of settlement, although the overseers of the district of his settlement were willing to accept and remove him without such order. Whilst the case does not explicitly fall within the language of the act of 1867, yet it is manifestly within its

spirit. We can exclaim with Justice Woodward, in *Sugarloaf v. Schuylkill County*, *supra*, that 'we do not greatly wrest the statute from its letter and not a whit from its spirit,' by compelling the payment of these costs. They are just and reasonable, and were demanded, and payment refused, before these proceedings were instituted. We decline, however, to allow Clinton an attorney fee, because it demanded more than was due and owing by Union."¹³

Voluntary Payment and Laches.

"We are required by the case-stated, to make a ruling upon the question whether the Austin poor district can be required to pay the Homer poor district the money expended by the latter during the years 1892-3-4, in the maintenance of Rose Ehrhart. It was conceded on the argument that these moneys were voluntarily paid without any legal process or even a request to Austin to pay them. We think that under such voluntary payment they cannot now recover of Austin district. The payments were made without compulsion. The cases all agree that a party who has paid an unfounded demand without constraint cannot recover it back. It was his folly to part with his money, and he must submit to lose it: *Locke v. Mercer Co.*, 9 Pa. 318; *Natcher v. Natcher*, 47 Pa. 496; *King v. Commonwealth*, 103 Pa. 487.

"I am further of the opinion that independent of the question whether this money can be recovered as a voluntary payment, that the poor district of Homer is estopped by its own laches from recovering from Austin the moneys expended prior to notice of their claim to Austin about the time of the order of removal. In view of this case the poor district of Austin is liable for the maintenance of Rose Ehrhart since the order of removal of October 29, 1894. but is not

¹³ *Clinton Township Overseers v. Union Township Overseers*. 5 Pa. C. R. 124.

liable for the moneys expended by Homer poor district for her maintenance prior to that date.”¹⁴

Laches.

“It was considered a serious question as to what expenditures should be allowed the poor district of Jersey Shore. The overseers of that borough have, it seems to us, been very negligent in their efforts to find the last place of settlement of the pauper. There is nothing in this case to excuse the delay in their action. By ordinary diligence all the necessary facts could have been learned by them in a very short space of time. The pauper became a charge in July, 1890, and no steps for her removal were taken until August, 1894. Nothing, therefore, will be allowed for any relief furnished the pauper, or any moneys expended on her account prior to her removal on August 14, 1894. No attorney fee allowed in this case.”¹⁵

“The appeal in the court below was taken from the order of approval as well as from the order of removal. The appeal was properly sustained by the court below. The pauper became a public charge September 24, 1891. Being an insane person, she was immediately removed to the hospital for the insane at Danville. The order of approval was not taken out until September 20, 1893, nearly two years thereafter. Henry Ziegler, Jr., did not die until September, 1892. If defendant had given plaintiff timely notice the husband could no doubt have been compelled to provide for his wife. The slightest inquiry on the part of the poor directors of the defendant district would have revealed not only the settlement of Henry Ziegler, Jr., but his ability to maintain his unfortunate wife. No such effort seems to have been made. It will be unfair, therefore, to visit the laches of the defendant district upon the plaintiff district.

¹⁴ Homer Poor District *v.* Austin Poor District, 19 Pa. C. C. R. 546.

¹⁵ Jersey Shore *v.* Nippenose, 18 Pa. C. C. R. 473.

"We are of opinion, therefore, that the decree of the court below in regard to the order of approval should be affirmed." ¹⁶

The following act makes a radical change as to the payment of costs and charges, limiting them to those incurred within ten days immediately preceding the time when an order for relief is procured and delivered.

Act May 23, 1893, P. L. 116. P. & L. Dig. 3513, § 29.

Limiting the Liability of Poor Districts.

Section 1. Be it enacted, etc., That hereafter no poor district in this commonwealth shall be held or adjudged liable to any person for or on account of relief of any kind or nature whatsoever afforded by him to any poor, sick, or destitute person for more than ten days immediately preceding the time when an order for relief of such poor person shall have been procured and delivered to the overseers of the poor of the district wherein such relief shall have been afforded.

¹⁶ Central Poor District of Luzerne County *v.* Poor District of Jenkins Township et al., 4 Super. Ct. 16.

CHAPTER XVI.

COLLECTION OF COSTS.

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Collecting Costs from Persons Living out of District. P. & L.
Dig. 3543, § 129.

Act of 1836, Section 21. If any person ordered to pay costs or charges as aforesaid, other than overseers as aforesaid, shall live out of the jurisdiction of said court, it shall be the duty of any magistrate of the county in which such person shall reside, on request to him made, and on the production of a copy of such order, certified under the seal of such court, to issue his warrant to levy the same by distress, and if no sufficient distress can be had, to commit such party to the common jail, there to remain, without bail or mainprize, until such costs or money be paid, or until he be otherwise legally discharged.

Collecting Costs from Overseers out of District. P. & L. Dig.
3543, § 130.

Act of 1836, Section 22. If any overseer be ordered to pay costs or charges as aforesaid, and the township liable therefor be out of the jurisdiction of such court, it shall be the duty of the court of quarter sessions of the county in which such township is situate, on request to them made, and on the production of a copy of such order, certified under the seal of the court making the same, to compel payment of such costs and charges, according to law.

**Pauper Falling Sick, etc., out of His Proper District. P. & L.
Dig. 3556, § 155.**

Act of 1836, Section 23. If any person shall come out of any city or district in this commonwealth into any other district, and shall happen to fall sick or die before he have gained a settlement therein, so that he cannot be removed, the overseers of such district shall, as soon as conveniently may be, give notice to the guardians or overseers of the city or district where such person had last gained a settlement, or to one of them, of the name, circumstances and condition of such poor person, and of the guardians or overseers to whom such notice shall be given, shall neglect or refuse to pay the money expended for the use of such poor person, and to take order for relieving and maintaining him, or in case of his death before such notice could be given, shall on request made, neglect or refuse to pay the moneys expended in maintaining and burying such poor person, in every such case it shall be the duty of the court of quarter sessions of the county where such poor person was last settled, upon complaint to them made, to compel payment by such guardians or overseers, of all such sums of money as were necessarily expended for such purpose, in the manner directed by law, in the case of a judgment obtained against overseers.

Penalty for Disobedience.

"A pauper was ordered to Schuylkill county by two several orders of removal, each in due form, and from neither of which did the directors appeal. They became conclusive evidence, therefore, that the last legal settlement of the pauper was in Schuylkill county, and that it was the duty of the directors to receive and provide for him.

"What is the consequence of disobedience to an order of removal on the part of those to whom it is addressed? A fine of \$20, according to our poor law of 1836, and nothing more. The statute gives no remedy against the district for the support of a pauper after the order of removal. It contemplates an immediate removal, as soon as he becomes chargeable, and a prompt acceptance of him by the officers of the district to which he is removed. If an appeal be taken

by either party, the court of quarter sessions have power, on final hearing, to allow such 'costs and charges' as they shall consider reasonable and just, which are sometimes very considerable: *Walker Township v. Buffalo Township*, 11 Pa. 95. But where the order is not appealed from, nor yet obeyed, the statute provides no remedy except the penalty above named.

"The twenty-third section of the act provides for the case of a pauper falling sick out of his proper district, and who 'cannot be removed.' In such case the district in which he had his last legal settlement is liable for his support, after notice, and the quarter sessions of the county in which that district is, have power, on complaint made to them, to compel payment by the overseers or guardians of all such sums as were necessarily expended in curing or burying the pauper in the district where he fell sick.

"The proceeding in the court below was instituted under this section, and the court dismissed it for want of jurisdiction.

"The case is evidently not within the letter of the statute, for though the insanity of the pauper, which befell him in Sugarloaf Township, might well enough be considered sickness within the provision of the act, yet it did not disable him from being removed, as is proved by the two removals that were made. Nor was the case of *Versailles v. Mifflin*, 10 Watts, 360, within the letter of the twenty-third section, yet this court treated it as within the equity of the act, and supported the jurisdiction of the quarter sessions. The consideration of justice and convenience which weighed in that case apply here.

"The overseers of Sugarloaf did their whole duty faithfully, and the directors of the poor of Schuylkill neglected theirs. The policy of the statute is to commit paupers to the jurisdiction of the quarter sessions, that speedy relief and justice may be administered. Why then, should Sugarloaf be put to the slow process of an action at law, to recover that sup-

port which Schuylkill was bound to render, if indeed an action would lie, which may be well doubted? Why not treat the case within the equity of the statute, and hold Schuylkill bound to answer in her own quarter sessions? The court is provided with a jury, and can try an issue of fact as well as the common pleas. The material fact, the legal settlement of the pauper, is already decided, and is not again to be drawn in question. Had Schuylkill appealed from the orders of removal (Sugarloaf could not, for they were in her favor), the quarter sessions would have had jurisdiction to allow costs and charges, and we do not greatly wrest the statute from its letter, and not a whit from its spirit, by allowing it to sustain the present proceeding. The order of the court is reversed, and the record remitted for a *procedendo*.”¹

Limits no Time for Notice.

“The act of June 13, 1836, Section 23, limits no time within which the overseers of any district into which a poor person may come and fall sick or die, shall ‘give notice to the guardians or overseers of the city or district where such person had last gained a settlement, of the name, circumstances and condition of such poor person.’ The act merely requires that the notice shall be given ‘as soon as conveniently may be,’ and this requirement is satisfied by a notice given with reasonable promptness after the place of settlement has been ascertained by the exercise of proper diligence.”²

“The act of June 8, 1893, P. L. 345, which provides ‘that the several courts of common pleas within their several counties have the power to issue writs of mandamus to all officers or magistrates elected or appointed within their respective counties,’ does not take from the court of quarter sessions the power to make or enforce orders under the poor laws, plainly

¹ Overseers of Sugarloaf Township v. Directors of Schuylkill County, 44 Pa. 481.

² Cowanshannock Township v. Valley Township, 152 Pa. 504.

conferred upon it by the twenty-third section of the act of 1836." ³

Defects in Order Directing Payment of Expenses.

"On March 9, 1887, two magistrates of the county of Union, issued an order of relief to the overseers of the poor of Lewisburg borough, declaring 'that James Dull, a poor and impotent person, in destitute circumstances, sick and unable to provide for himself, died on May 28, 1885, leaving no means to pay his funeral expenses, and the same was furnished by one Jacob Hower. You are hereby authorized to take charge of the said case, and if you find the circumstances to be as represented, to pay the bill of the said Jacob H. Hower, amounting to \$29.50, which said expenditure is approved by us.' This order, as appears by the affidavit filed, was not served on the overseers of Lewisburg until September 7, 1887, upon which day they appealed to the next court of quarter sessions.

"Two reasons have been assigned to quash this appeal. We will dispose of them in their inverse order. The second is because the act of June 16, 1836, prescribes the remedy in such cases, and must be strictly pursued. The twenty-third section of said act provides for the recovery of the expenses of relieving paupers out of their places of settlement. It provides how the overseers of a district relieving a pauper out of his district, who is incapable of removal, shall recover the expense from the overseers of his proper district. The case in hand is not a contest between the overseers of two contending districts. This order neither avers that James Dull had a settlement in Lewisburg, nor that he had not or that he had one elsewhere. Indeed, it is silent as to where he lived or died. There is nothing on the record, or in the evidence *aliunde*, to satisfy us that the case comes within the twenty-third section of the act of 1836. This exception must be overruled." ⁴

³ Rouse Estate *v.* McKean, 169 Pa. 116.

⁴ Hower *v.* Lewisburg, 6 Pa. C. C. R. 67.

CHAPTER XVII.

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May Appeal from Refusal of Magistrate to Grant Warrant or order. P. & L. Dig. 3538, § 114.

Act of 1836, Section 24. If any magistrate shall refuse to grant a warrant or order of removal as aforesaid, it shall be lawful for the overseers aggrieved by such refusal to appeal to the next court of quarter sessions of the county in which such magistrate resides, who shall thereupon hear and finally determine the same.

This section is from the act of April 2, 1821, 7 Sm. 480.
See also following act.

Act April 15, 1867, P. L. 84. P. & L. Dig. 3540, § 119.

An Act to provide for the payment of costs in the removal of paupers, in certain cases.

Whereas, it sometimes happens that a pauper, removed under an order of removal from two magistrates, in pursuance of existing laws of this commonwealth, is accepted by the district to which he, or she, may be removed, without appeal:

And whereas, doubts exist as to the rights, under existing laws, of the district, so removing, to recover costs and charges in such cases; therefore,

Section 1. Be it enacted, etc., That it is the true intent

and meaning of the existing laws of this commonwealth, that the district, so accepting such poor person, shall be liable to the district removing said poor person, for costs and charges, in the same manner, and to the same extent, that they would have been, had the case been determined against said district, by the court of quarter sessions, upon an appeal from said order of removal.

Penalty from Bringing Paupers into a District.
3544, § 181.

P. & L. Dig.

Act of 1836, Section 25. If any person shall bring, or cause to be brought, any poor person from any place without this commonwealth to any place within it, where such poor person was not legally settled, and there leave, or attempt to leave such person, he shall forfeit and pay the sum of seventy-five dollars for every such poor person, to be sued for and recovered by the overseers of the district into which such poor person may have been brought, and moreover, shall be obliged to convey such poor person out of the commonwealth, or support him at his own expense.

Penalty for Bringing Negro Paupers into a District.

Act of 1836, Section 26. If any person shall bring or cause to be brought into this commonwealth any black or colored indentured servant, such person, or his or her heirs, executors, administrators and assigns, shall respectively be liable to the guardians or overseers of the city or district to which such black or colored person shall become chargeable, for such necessary expenses as such guardians or overseers may be put to for his or her maintenance, support and interment, together with the costs therein.

Liability of Owners of Slaves.

Act of 1836, Section 27. Every person in whom the ownership or right to the service of any negro or mulatto slave shall be vested, shall be liable to the overseers of the district in which (such) negro or mulatto shall become chargeable for all expenses which such overseers may be put to for maintenance, support and interment of such negro or mulatto, with the costs thereon.

This section is from the act of March 1, 1780, Section 6, 1 Sm. 498, which includes heirs and assigns. See comments on the old act, 1 Dallas, 469. See act of 1780, Dunlop's Laws entitled "An act for the gradual abolition of slavery," and notes. See also *Overseers v. Kline*, 9 Pa. 217, as to slaves.

CHAPTER XVIII.

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Duty of Relations to Support Poor Persons. P. & L. Dig. 3544, § 132.

Act of 1836, Section 28. The father and grandfather, and the mother and grandmother, and the children and grandchildren, of every poor person not able to work, shall, at their own charge, being of sufficient ability, relieve and maintain such poor person at such rate as the court of quarter sessions of the county where such poor person resides shall order and direct, on pain of forfeiting a sum not exceeding \$20 for every month they shall fail therein, which shall be levied by

the process of the said court and applied to the relief and maintenance of such poor person.

On April 15, 1857, a supplement to the act of June 13, 1836, was passed, enlarging the powers of the court of quarter sessions, under the twenty-eighth section of the act of 1836, which is as follows:

Act April 15, 1857, P. L. 191. P & L Dig. 3545, § 183.

A supplement to an act relating to the support and employment of the poor, approved the thirteenth day of June, Anno Domini one thousand eight hundred and thirty-six.

Section 1. Be it enacted, etc., That the courts of quarter sessions in the several counties of this commonwealth shall have power to hear, determine and make orders and decrees, in all cases arising under the twenty-eighth section of the act of June 13, 1836, either upon the petition of the overseers of the poor, or of any other person or persons having an interest in the support of said poor person or persons, and either with or without an order of relief having been first obtained.

“The present system of poor laws in England practically originated in the statute of 43 Elizabeth, C. 2, which in its seventh section enacted: ‘That the father and grandfather, and the mother and grandmother, and the children and grandchildren of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of sufficient ability, shall, at their own charges, relieve and maintain every such poor person in that manner and according to that rate, as by the justices of the peace of that county, where such sufficient persons dwell, or the greater number of them, at their general quarter sessions, shall be assessed, upon pain that every one of them shall forfeit twenty shillings for every month which they shall fail therein.’

“‘The parish,’ says Sergeant Stephen, in his Commentaries, Vol. 3, p. 174, ‘however, will be immediately exonerated from the burthen, if the pauper has any relation com-

petent and by law compellable to maintain him.' 'They are liable to maintain him at such rate as shall be assessed, by the order of the justices at their general quarter or petty sessions, on refusal to obey such order, the sums so assessed are recoverable (with penalties) by a summary process before two justices of the peace, and may be levied by distress and sale of the goods and chattels of the offender, in default of which he may be committed to prison.'

"The seventh section of the statute of Elizabeth was substantially re-enacted in this state, in the twenty-ninth section of the act of March 9, 1771, 1 Smith, 344, the penalty being raised to forty shillings. In the act incorporating the guardians of the poor for the city and districts, passed March 29, 1803, in its twenty-ninth section, which is framed from the above section, the word 'grandchildren' is introduced among those compellable to maintain their poor relations, and the penalty is increased to \$7 for every month. The revisers, in speaking of what is now the twenty-eighth section of the act of June 13, 1836, say it is derived from the twenty-ninth section of the act of 1771. We have added 'grandchildren' to the enumeration of persons under legal obligation to relieve and maintain poor relations; considering that as grandparents were already bound to support grandchildren, the obligation ought to be reciprocal.'

"By the twenty-eighth section of the act of 1836, 'the fathers and grandfathers, and the mothers and grandmothers, and the children and grandchildren of every poor person not able to work, shall at their own charge, being of sufficient ability, relieve and maintain such poor person at such rate as the court of quarter sessions of the county where such poor person resides shall order and direct, on pain of forfeiting a sum not exceeding \$20 for every month they shall fail therein, which shall be levied by the process of the said courts, and applied to the relief and maintenance of such poor person:' Seibert's Ap., 19 Pa. 56.

"By the act of April 15, 1857, P. L. 191, the courts of quar-

ter sessions of the several counties of this commonwealth have power to hear, determine and make orders and decrees, in all cases arising under the twenty-eighth section of the act of June 13, 1836, either upon the petition of the overseers of the poor, or of any other person or persons having an interest in the support of such poor person or persons, and either with or without an order of relief having been first obtained.

"There can, therefore, be no doubt that the relations of a pauper mentioned in the twenty-eighth section of the poor laws, if competent and of sufficient ability, are compellable to maintain him, and that the jurisdiction in relation to it is vested in the court of quarter sessions, whose power is limited to \$20 per month." ¹

In Seibert's Ap., 19 Pa. 56, Lewis, J., *inter alia*, says: "In Pennsylvania the grandfather, as well as the father, is required by the act of June 13, 1836, Section 28, to relieve and maintain his grandchildren, when their necessities require it. This statute is in accordance with the moral sense of mankind. Those who suppose that infant grandchildren do not, upon the death of their parents, take the place of the latter in the affections of their grandfather, are strangers to the most ordinary manifestations of the best feelings of the human heart. As the mementoes of the departed child, they have peculiar claims to his regard; and their unprotected helplessness, produced by the common bereavement, in most cases rivets his affections to them closer than they ever clung to their parents."

Remedy to Enforce Compliance—Cannot Imprison or Require Security.

"In a proceeding in the court below to compel the plaintiff in error to provide for the support of his mother, after a hearing, the court made an order 'that the defendant, Frank

¹ Wertz v. Blair County, 66 Pa. 18.

J. Dierkes, pay the sum of \$3 per week for support of his mother, Rosanna, and the further sum of — dollars for each of his minor children, from September 8, 1877, and give security in the sum of \$300 for the faithful performance of this order, pay the costs, and stand committed till the order be complied with.

“This order was assigned for error. The twenty-eighth section of the Act of June 13, 1836, P. L. 547, under which it is said the order was made, does not justify it. Said section provides that in such cases the defendant shall comply with the order of the court ‘on pain of forfeiting a sum not exceeding \$20 for every month they shall fail therein, which shall be levied by the process of the said court, and applied to the relief and the maintenance of such poor person.’ The act does not authorize the court to require security, much less to commit the defendant for a non-compliance with its order. Nor can the power to commit for contempt in not obeying the order be implied in view of the penalty expressly imposed. That penalty is \$20 per month, which shall be levied by the process of the said court.”²

Any Person Interested May Make the Complaint.

“In a proceeding under the twenty-eighth section of the acts of June 13, 1836, and of April 15, 1857. The former act, *inter alia*, declares that the children of every poor person not able to work, shall at their own charge, being of sufficient ability, relieve and maintain such poor person at such rate as the court of quarter sessions of the county, where such poor person resides, shall order and direct. Under the act of 1836 it was held the complaint must be made by the overseers of the poor, but by act of April 15, 1857, P. L. 91, the court of quarter sessions was authorized to make such order and decree, not only on the petition of the overseers of the poor, but also upon ‘the petition of any other person or persons having

² Dierkes v. City of Philadelphia, 93 Pa. 272.

an interest in the support of such poor person or persons.'

"In this case the application was made by the person for whom the order of relief and maintenance was desired. The court appointed a commissioner to take the evidence and report the facts, with the finding. He found the petitioner was poor and unable to work, and 'that his adult children, the respondents,' were able to maintain and support him. The court concurred in the conclusion arrived at by the commissioner, and ordered 'that Michael and James O'Conner and the other adult children of the petitioner' pay him \$4 per week with costs.

"Two objections are made to the validity of this decree.

"1. It is contended that the law does not permit the application to be made by the person for whom the relief is sought.

"Why not? The statute declares it may be made by any person 'having an interest in the support of said poor person.' It is silent as to the kind of interest the applicant must have. It does not state whether the interest must be pecuniary, or whether it may be such as springs from being related by blood or marriage to the poor person, or whether, in case of the unwillingness of all such to make the application, a kind and benevolent neighbor, who voluntarily contributes largely to his support, possess the requisite interest. The act of 1857 should receive such an interpretation as to give due effect to the manifest spirit of the law. Its only object is to extend the facilities for procuring support to the class of poor described. It cannot be said that one in need of food, clothing and shelter has no interest in his own support. He feels quite as much interest in procuring the necessary comforts of life as many of his relatives may have in furnishing them. Their self-interest may not always make them eager to impose on themselves the obligation provided by the statute. We are clearly of the opinion that the person entitled

to be supported under the act of 1836 may make the application under the act of 1857.”³

Decree Must Not be Vague or Uncertain.

“2. The other objection is to the form of the decree. We think this well taken. It is too vague and uncertain. It gives the names of only two of the children on whom the charge is imposed. It wholly omits to state the names or the number of ‘the other adult children’ who were ordered to pay. It will not do to consider the charge imposed on them as surplusage, and impose the whole on the two named. That would be in conflict with the clear intent of the court, and with the manifest spirit of the decree. In case of a failure to comply with the order, no process for its enforcement would justify a levy on the property of ‘the other adult children.’

“The report of the commissioner does not contain any finding of the number or the names and ages of all the children, and in the answer of James he admits them to be correctly stated. The other children put in no answer and made no admission. All this may have aided the commissioner in finding the names of the adult children, and the court in framing the proper decree; but the material was not thus used by either.

“The name of each person on whom the order is made should be distinctly stated. If, in the opinion of the court, the children are of such unequal ability that some should justly pay more than others, then the decree should equitably apportion the gross sum among them and specify the amount to be paid by each.”⁴

The question whether the grandparents of a bastard are liable for his support and maintenance, under the twenty-eighth section of the act, has frequently arisen in the author’s practice, and while it has never been directly decided by the

³ James O’Connor’s Appeal, 104 Pa. 437. ⁴ *Ib.*

supreme court of this commonwealth, as far as we have been able to see, yet we have invariably held that there is no liability.

"Bastards, generally speaking, belong to no family, and have no relations; accordingly they are not submitted to the paternal authority, even when they have been acknowledged: 11 East, 7 n. And while it has been held in England that fathers and mothers owe alimony to their children when they are in need (Ib., Art. 254, 256), and that alimony is due to bastards, though they be adulterous and incestuous, by the mother and her ascendants (Ib., Art. 262); yet we do not believe this to be the law in Pennsylvania.⁵

"It was also held that 'no responsibility rested on the putative father beyond the consequences of the conviction, and no reciprocal right springs from the duty imposed on him by the law.'⁶

"The third section of the act of April 27, 1855, provides as follows: 'That illegitimate children shall take and be known by the name of their mother, and they and their mothers shall respectively have capacity to take or inherit from each other personal estate as next of kin, and real estate as heirs in fee simple, and as respects such real or personal estate so taken and inherited, to transmit the same according to the intestate laws of this state.'

"It was held that the foregoing section did not legitimize illegitimate children, it only gave the child and mother capacity to inherit from each other as next of kin, and, that the words of the act confine its operation, as regards the child, to estate taken and inherited from the mother, leaving all her property derived from any other source unaffected by the act."⁷

In another case, the court below, speaking of the act of 1855, say, *inter alia*: "The statute endows the mother and

⁵ James O'Connor's Appeal, 104 Pa. 437.

⁶ Directors of the Poor v. Dungan, 14 S. & R. 402.

⁷ Grubb's Appeal, 58 Pa. 55.

child with capacity to inherit from each other, but does not undertake to make the child legitimate; nor does it confer any inheritable capacity to any other persons than the mother and the child.”⁸

It was further held that it does not legitimize children, even so far as their mother and her next of kin are concerned, and that when a bastard dies before his mother, he cannot transmit a right from her to his children, that the words of the act do not extend to the possibility of a future inheritance.

The same construction was put upon the act in *Opdyke's Ap.*, 49 Pa. 373, and in *Wolternate's Ap.*, *Ditsche's Est.*, 86 Pa. 219.

“The provisions of the Rev. St., C. 61, Section 2, Mass., that an ‘illegitimate child shall be considered as an heir of his mother, and shall inherit her estate, in like manner as if he had been born in lawful wedlock, it was held do not apply to grandchildren: *Curtis v. Hewins*, 11 Metcalf, 294.

“By examining the twenty-eighth section of the act of 1836, we perceive that the duties are mutual and reciprocal. In the case of legitimates the persons named in this section may inherit from each other, whether descendants or ascendants, a quality entirely lacking in bastards, except as modified by the act of 1855, and construed by the cases cited, but neither the act itself or the cases embrace grandparents or grandchildren; on the contrary, they are flatly the other way.”⁹

It then resolves itself to this: That the illegitimate is still *nullius filius*, and of course cannot be a grandson, and lacks the mutual and reciprocal relations, which seem to be the basis of liability for their support and maintenance.

Insurance on the Lives of Parents.

“Maintenance of a father or mother unable to work is a legal liability. When we add to this the feelings of natural

⁸ Neil's Appeal, 92 Pa. 194. ⁹ Steckel's Appeal, 64 Pa. 49.

affection, and the desire produced by these feelings to provide for the comforts of parents, the right to effect an insurance on the life of the parent, to carry out these purposes, ought not to be denied. It would be technical in the extreme to say that a son has no insurable interest in his father's life. Poverty may overtake the father in his lifetime, and thus both father and mother be cast upon the son; or if the father die before her, the necessity may fall at once upon the son. Why, then, should he not be permitted to make a provision, by insurance, to reimburse himself for his outlays, past or future? What injury is done to the insurance company? They receive the full premium, and they know in such cases, from the very relationship of the parties, that the contract is not a mere gambling adventure, but is founded on the best feelings of our nature, and on a legal duty, which may arise at any time. We are of the opinion the policy is not void."¹⁰

Liability is Measured by Individual Ability.

"A grandchild is not discharged from the liability for the relief for his grandparents, by proof of other grandchildren not reached by process, or even of children out of the jurisdiction of the court; his liability is individual, to be measured by his individual ability. In this case, a poor district asked for an order of relief against certain children and grandchildren of a pauper. There were other children and grandchildren either out of the jurisdiction or not served with process, some of whom were well able to give relief. None of the respondents except one, a grandson, was able to contribute towards pauper's support. Held, that said grandson was liable to the extent of his individual ability.

"Our act of March 9, 1771, was a substantial copy of the English act of 43 Eliz., C. 2, S. 7. It made grandparents

¹⁰ Reserve Mutual Life Insurance Company v. Kane, 3 W. N. C. 201.

liable for the relief and maintenance of their grandchildren, but imposed no corresponding duty or obligation upon the latter. The revisers, in speaking of what is now the twenty-eighth section of the act of 1836, say it 'is derived from the twenty-ninth section of the act of 1771. We have added grandchildren to the enumeration of persons under legal obligation to relieve and maintain poor relations; conceiving that, as grandparents were already bound to support grandchildren, the obligation ought to be reciprocal:' *Wertz v. Blair Co.*, 66 Pa. 18. It was held by Judge Parsons, in a very well considered case, that where the parents of the poor person are either unable to relieve and maintain him, or, being able, are out of the jurisdiction of the court, the obligation of the grandparents to do so is absolute, notwithstanding the fact that the parents are living: *Guardians v. Smith*, 4 Clark's Cases, 62. This decision was recognized and approved: *Duffey v. Duffey*, 44 Pa. 401. The obligation of grandparents and grandchildren having been made reciprocal by the act of 1836, the same principle applies here. It follows that, if these grandsons are of sufficient ability, it is their legal duty to relieve and maintain these old people, and that they may be proceeded against in the first instance, notwithstanding the fact set up in some of the answers, that there are children who are able to do so, for the reason that there are none of sufficient ability within the jurisdiction of the court."¹¹

Liable Notwithstanding There are Others Out of the Jurisdiction who are Able.

"Judge Parsons' remark is pertinent here: 'But I can find nothing in the law that requires the guardians of the poor to leave a responsible person and go to foreign parts to look for another party when they have one near them that is equally responsible with such other.' This is all that is neces-

¹¹ In re Hadsall et ux., 3 Luz. Leg. Reg. 129.

sary to be said upon this question, but we do not mean to be understood as implying that these grandsons would not be liable if these conditions did not exist. The plain terms of the act of 1836 put children and grandchildren, so far as the public is concerned, on the same footing. If it had been intended to make the legal obligation of the latter conditional upon the death, poverty, or absence from the jurisdiction of the former, the legislature would have said so in express terms, and the doctrine of analogous cases relating to the liability of grandparents is against the introduction of such conditions in the act by judicial construction. For example, it was held that an order directing a person to pay a weekly sum for the maintenance of his grandsons is good without stating that their father is unable, absent, or dead. Lord Tenderden said: 'There is nothing in the act of Parliament to show that the obligation of the grandfather is absolute only in the event of the father being unable.' *Rex v. Cornish*, 2 B. & Ad. 498. See also *Seibert's Ap.*, 19 Pa. 56; *Duffey v. Duffey*, 44 Pa. 399.

"Under the evidence in these cases the liability of these grandchildren is the same as that of children. They are not discharged from their legal obligations by proof that there are other grandchildren not reached by this process, or even children out of the jurisdiction of the court, who are equally, if not better able than they are. The liability of each is an individual one, and is to be measured by his individual ability. Their first duty is, of course, to the family immediately dependent upon them, and if they are only able to discharge that duty, the law will not compel them to do more, however strongly sentimental considerations might seem to urge them to extraordinary efforts and sacrifices. If the parties served with process are not of sufficient ability, taking into consideration their duty to their immediate families to contribute the entire amount required for the support of their grandparents, but still are able to contribute a portion of the amount that they may require, we have no doubt that the

power of the court to fix the rates and to make the necessary orders authorizes us to direct each one to furnish relief according to his ability. This results from what we have said as to their several liability.”¹²

Conveyance in Fraud to Avoid Payment.

“Aaron Hufford was a man about forty years of age, unmarried and without issue, and was, on March 7, 1893, at the instance and expense of the plaintiff, the Hemlock township poor district, admitted to the hospital for the insane at Danville, Pa., where he has ever since been and is now confined, treated and cared for by that institution, at an expense to the plaintiff of \$1.75 per week.

“George D. Hufford, the father, is seventy-two years of age. He received a pension from the United States of \$36 a month, or \$432 a year. He also owned a farm of about 100 acres in Hemlock and Union townships, upon which he and his wife resided. This is stocked with farm implements and necessary horses and cattle, with a suitable house and out-buildings. Prior to February, 1894, George D. Hufford also acquired other lands in the neighborhood of his homestead farm, and on the latter date his stock, farming implements and real estate, exclusive of judgments against the latter, were fairly worth not less than \$4,000.

“Just prior to the institution of this proceeding, demand by the overseers of the plaintiff was made upon the defendants for reimbursement to the former for expenses incurred on account of Aaron Hufford, as aforesaid. This demand was refused by the defendants, and immediately thereafter, to wit, on Feb. 28, 1894, they joined in a deed to their son, Allen Hufford, conveying to him all the real estate of George D. Hufford (excepting about eight acres). It is claimed also that they further transferred to Allen all the stock and farming implements, but the evidence in this be-

¹² In re Hadsall et ux., 3 Luz. Leg. Reg. 129.

half is very meagre. It is further alleged that this conveyance and transfer were to pay Allen for work he and his wife had done upon the farm in previous years, and that George D. Hufford has now but a life lease of the property. This claim concerning the father's liability for the work of the son Allen is only supported by the general statement of the father, and is scarcely alluded to by the son in his testimony.

"The conveyance and transfer by George D. Hufford and wife to his son Allen were not made in good faith, on account of any indebtedness which was at all commensurate with the value of the property transferred, but was made for the purpose of avoiding the liability of the father for the support and maintenance of his said son, Aaron Hufford.

"We will take no account of the pension of said George D. Hufford, as we are of the opinion that under the act of congress that inures wholly to his personal benefit: *Moore v. Dash*, 16 W. N. C. 239. But concluding that, irrespective of such pension, he is of sufficient ability, therefore it is ordered that the rule in this case be discharged as to Sophia Hufford, and made absolute as to George D. Hufford, and it is further ordered that the said George D. Hufford pay to the plaintiff as reimbursement to the latter for the relief and maintenance already furnished by it for the said Aaron Hufford, the sum of \$250 forthwith, being at the rate of \$1.75 per week, for the period since March 7, 1893, and hereafter that the said George D. Hufford also pay to the plaintiff, during his confinement at the hospital at Danville, at the expense of said plaintiff, for the relief and maintenance of the said Aaron Hufford, the sum of \$1.75 per week from this date, payable quarterly, etc. On the authority of *Township v. Cook*, 6 Pa. C. C. R. 624, no costs are allowed in this proceeding." ¹³

¹³ *Hemlock Township Poor District v. Hufford et al.*, 8 Luz. Leg. Reg. 202.

Liability of Parent for Insane Convict.

In an action of assumpsit, plaintiff's claim was for money laid out . . . for support, maintenance and care of Theodore Hirner, an insane pauper, and a son of, and for whose support and maintenance, defendant is liable, at the hospital for the insane at Danville, from January 1, 1884, to June 1, 1888. "It appears from the affidavit of defence that Theodore Hirner was tried in the court of quarter sessions and acquitted on the ground of insanity. The court in due course ordered his detention in the state hospital at Danville, there to be kept and treated at the expense of the county, in accordance with the provisions of the act of March 31, 1860, Section 66, P. L. 445.

"The plaintiff's counsel contends that the poor district is liable to the hospital, and that under certain circumstances, the relatives of the insane person, thus committed, are liable over to the poor district. Conceding this to be so, it has been held that the proceedings to enforce this liability over of the relatives should be in the quarter sessions, under the act of June 13, 1836, P. L. 547, and April 15, 1857, P. L. 191: *Wertz v. Blair Co.*, 66 Pa. 18. In the present case all exceptions to the jurisdiction of the court of common pleas are waived; nevertheless, the plaintiff, in order to recover, must allege and prove all that would be required if the proceedings were in the quarter sessions. It will be seen, upon examination of the act of 1836, that the allegation that Theodore Hirner was, and is, a pauper is essential. If it, or some equivalent allegation were not contained in the plaintiff's statement, no cause of action would be shown. The mere fact that he is a son of the defendant, it not appearing that he is a minor, would not be sufficient to make the defendant liable. For aught we know, he may have ample property of his own. If, however, he is a pauper, the defendant may be liable. But the denial of this essential fact, namely, the indigence of Theodore Hirner, in the affidavit of defence, is as specific and unequivocal as the charge, and is sufficient

to prevent judgment until the fact can be properly decided." ¹⁴

Ability of Parent to Support Pauper Child.

Eli Case was the father of Phœbe Case, who was confined as an insane person in the insane department of the Bradford county poor house, and was supported by the poor district as a pauper. The father was eighty years of age, feeble, almost helpless, being confined to his house and constantly requiring the attendance of a physician and nurse. He is the owner of a farm of 120 acres, eight cows, thirty sheep, and two old horses, the latter valued at about \$35. The fair rental value of the farm and stock per year was fixed at about \$125. A son lives with him on the farm, works it, and assists his father.

The opinion of the court was delivered by Morrow, P. J.: "I think this rule ought to be discharged. Eli Case is eighty years old, feeble, and comparatively helpless. His land and personal property are worth from \$3,000 to \$3,500. The personal property consists mainly of eight cows and thirty sheep, and his real estate consists of 120 acres of land. Mr. Case's wife is dead, and his son Samuel has to attend to his father and his property. Phœbe is insane. To keep both of them would cost from \$500 to \$600 a year, including medical attendance. At this rate his entire estate would be soon eaten up, and his son would be compelled to take charge of his father, or he would become a public charge. The money for their care, in good part, would have to be borrowed, and the land pledged for its payment. The act provides that if he is of sufficient ability he must support his daughter. It was not the intention of the legislature to pauperize a father in order to support his children. To make this rule absolute, it would have a tendency in that direction,

¹⁴ Central Poor District of Luzerne County *v.* Hirner, 5 Luz. Leg. Reg. 265.

and if Mr. Case lived but a few years his entire property would be gone." ¹⁵

Suit Against Child for Use and Occupation by Parent.

"Premises in possession of an indigent parent were recovered in ejectment. The plaintiff in ejectment then brought an action of assumpsit in the common pleas against one of several children to recover for the use and occupation by the parent. Held, that in the absence of an express contract to pay, there could be no recovery."

This was a suit brought in the court of common pleas of Chester county, Futhey, P. J., presiding, and was tried by agreement under the act of April 22, 1874, P. L. 109, before the court without the aid of a jury.

"The plaintiff claimed that the defendant was liable to him by virtue of the act of June 13, 1836, which imposes on children the duty of maintaining their parents who are unable to support themselves, . . . and, under the act of April 15, 1857, the courts of quarter sessions are invested with jurisdiction to make orders and decrees under the foregoing act, either upon the petition of the overseers of the poor, or of any other person or persons having an interest in the support of such poor person or persons.

"Under these acts there can be no recovery in the common pleas as is here asked. The act of 1836 provides that the relief and maintenance shall be at such rate as the court of quarter sessions shall order and direct, and the penalty for not complying with the order of the court is a forfeiture, to be levied and applied by the court to the relief and maintenance of such poor person.

"The acts contemplate that application shall be made to the court of quarter sessions, who shall consider the whole matter, ascertain who are liable to provide, what their liability is, what expense may be incurred to be met by those found

¹⁵ Bradford County Poor District *v.* Case, 2 Pa. C. C. R. 644.

to be of ability to afford relief, and who should contribute to such expense, and in what proportion.

"This cannot be done in the common pleas in a suit by one who claims to have afforded relief, seeking to recover against any one of those supposed to be liable, whom he may select. If one can bring suit, others can, and the whole matter of what sum could be properly expended, and who should contribute, and in what amounts, could not be properly determined. There would be a great danger of doing injustice by compelling one to pay more than his proper proportion of the expense. The person sued might be able to meet the demand of the particular case, but unable to meet other demands which might be added to it by other suits, without injury to himself and others dependent on him. In the case in hand, we gather from the testimony that while the defendant can and does liberally contribute according to his means to the support of his mother, to add additional burthens to those assumed by him would probably be doing him injustice, and be unduly burthensome upon him, and it would certainly be unduly burthensome to compel him to pay the claim of the plaintiff in this case.

"The acts of assembly wisely commit the whole subject to the court of quarter sessions, who can call all parties before them and make and enforce all proper orders and decrees.

"The point in question is decided in *Wertz v. Blair Co.*, 66 Pa. 18. See also *O'Connor's Ap.*, 104 Pa. 437; *James's Ap.*, 19 W. N. C. 369, 116 Pa. 152."

Judgment was entered for defendant.¹⁸

Support of Grandchild—Liability for.

The liability of a grandparent to maintain and support a poor grandchild arose under a writ of habeas corpus, issued out of the common pleas of Centre county, at the instance of

¹⁸ *Darlington v. Darlington*, 5 Pa. C. C. R. 132.

Mrs. Sarah Rankin, formerly Sarah Myers, to recover possession of her daughter, Jennie Myers, aged six years.

"The facts are as follows: W. H. Myers, wife and family, including Jennie Myers, were duly placed upon the township of Boggs, by virtue of an order of relief issued in January, 1888. He had six children then living. He died in May, 1888, a pauper upon Boggs township. A number of children were thus thrown upon the township, whose support had to be provided for by the overseers of the poor. William Lyon is the father of Mrs. Rankin. He has raised a family of twelve children. One at least is still a member of his family. It does not appear what provision has been made for the others, or how or where they are living.

"After the death of Mr. Myers, Jennie was taken by her mother to her father's home, where she remained a short time. Mrs. Miller had agreed to take Jennie, provided her mother consented she should have her. This consent was given. Mr. Lyon about this time had a conversation with Mr. Wyland, one of the overseers of the poor of Boggs township. In this conversation he informed the overseer that he, Lyon, would procure places for Mrs. Myers' sons, but he could not secure places for the girls; that he was not able to support them himself. A short time after this the overseers of Boggs township made an agreement with Lincoln Miller for the keeping of Jennie, and on July 9, 1888, she was duly indentured by the overseers to Lincoln Miller. This indenture is in proper form. Mr. Miller and his wife are industrious people and well prepared to properly care for, support and educate this little girl. Jennie is thus well provided for, and has a comfortable home. She has lived with Mr. and Mrs. Miller for over two years under this indenture, with the knowledge of both Mrs. Rankin and her grandparents, Mr. and Mrs. Lyon. No objection was made by any one until a short time ago, when Mr. Miller was about to move from the county to another section of the state. Mrs. Rankin seemed unwilling to have her child go, and this

led to the present proceeding. During these negotiations, and during the last two years no support or offer of support came from any relative of the family. Mr. and Mrs. Lyon own eleven acres of land in this county, the title to which is in Mrs. Lyon. Mr. Lyon is a laborer and depends largely upon his labor for support. It does not appear that much, if any, support, is derived from the land. Its value at a cash sale would not exceed over \$400 to \$600, and possibly not that much. Mr. Lyon is a worthy citizen, over sixty years of age. Mr. Rankin, the present husband of Jennie's mother, is a most excellent citizen of Clearfield county. He is dependent upon his labor for the support of himself and family. Upon the hearing of this case he expressed a willingness to take and raise this little girl as one of his own family. In this, he is to be commended for his generous nature, as he is not under any obligation to do so.

"As to Mr. Lyon's financial condition, it is very clear that when he informed Mr. Wyland before the indenture that he was not able to support his daughter's family, he said what was strictly true. His statement then must be considered in connection with his own family, and the increased burden which the support of at least two other little children would have cast upon him. Dependent upon the labor of his hands for a living, it is too clear that, at his age in life, he was unable to furnish proper support for all. While the act of 1836 makes the father and grandfather, mother and grandmother of any poor person not able to work liable for the support of such persons, yet this provision is based upon the fact that such parent or grandparent is possessed of sufficient ability to maintain and support such poor person. This ability consists largely of estate, and not merely labor of the hands. A person may be ever so willing to support a relative and yet, if that support is dependent upon the manual daily labor of the parent, it can scarcely be said to come within the meaning of this provision of the law. The law has regard to something much more substantial and permanent. There-

fore, the ability to support either parents or children is judged of by the estate possessed by such person and not by the uncertain fruits of daily toil. It is worthy of praise in Mr. and Mrs. Lyon that they are willing to assume this additional burden, but, under the facts shown, the law would not compel them to do so. In fact, the law would be powerless to compel the payment of any decree made for the maintenance of this child. The estate of Mr. and Mrs. Lyon would be insufficient to meet the demand. The law does not contemplate the exaction of the last cent when it is apparent a man has scarcely enough to meet his own pressing wants: *Whiting's Case*, 3 *Pittsburg R.* 129.

"It is also proper to say that the officers of the township, acting upon the statement of Mr. Lyon as to his inability to support this grandchild, bound it out to Mr. Miller. Mr. Miller has faithfully kept his covenant and supported it during two years, at a very tender age when it required daily and constant care. This support was furnished in view of the fact that the child, when it grew up, could in a measure repay, by its services, a part of this expenditure. The officers having so bound the child to Mr. Miller, and he having for two years rendered constant care and support to this helpless child, the relation ought not now to be disturbed, even if Mr. Lyon might be able to render proper support. In other words, under the facts of this case, the binding of the overseers is conclusive, that all the necessary requisites for giving them authority existed at the time, and the existence of those requisites is not now traversable. To hold otherwise would be doing manifest injustice to Mr. Miller. The relations of Jennie Miller ought rather to rejoice that she has found a pleasant home among strangers than now to be seeking to break the ties which bind her to Mrs. Miller as a mother. This case illustrates the wisdom of the poor laws in taking charge of the helpless poor and providing for their wants; and, if officers having this duty in charge were to perform that duty in the same conscientious manner in

which the overseers of Boggs township performed theirs in this case, much suffering would be alleviated and the destitute would receive that care and attention which the spirit of the law contemplates.

"For the reasons given, we must hold the indenture made by the overseers valid, and the writ of habeas corpus issued in this case must be discharged, and Jennie Myers remitted to the care of Lincoln Miller, under said indenture." ¹⁷

The Purpose of Section 28.

"At common law a father's liability to support a child ceases when the child reaches the age of twenty-one years, unless the child is of such feeble and dependent condition physically or mentally as to be incapable of self-support, and the burden of showing such condition is upon him who alleges it. If the child is capable of self-support at the age of twenty-one, the father's liability is determined, and cannot be restored by a subsequent change in the child's condition.

"A father cannot be convicted of deserting a child in violation of the act of 1836, unless his liability to support the child has been judicially determined by proceedings under this act itself.

"Whatever liability rested upon him was that imposed by statute, and is prescribed by the twenty-eighth section of the act of 1836. This liability is not of such a character as to support the charge of desertion. It is contingent upon the ability of the father. The purpose of this section is to protect the public against the expense of maintaining poor persons unable to work, whose parents, etc., are able to maintain them. That ability must be judicially ascertained by a proceeding taken under this section itself, and the amount to be paid designated and its payment decreed before the liability

¹⁷ Commonwealth v. Miller, 8 Pa. C. C. R. 525.

can be assumed, and then it can only be enforced in the manner prescribed by that section.”¹⁸

Parent not Bound to Support Spendthrift Son Upon His Own Petition.

“We regard the act of 1857 as settling every question as to the right of any other person having an interest in the support of such poor person to institute the proceeding. The supreme court have declared that the individual poor person himself may proceed by petition, he being a person interested: *O'Connor's Ap.*, 104 Pa. 437; *Smith v. Overseers*, 42 Leg. Int. 345. It follows that the petition in this case confers upon this court jurisdiction to make the order if the case, in other respects, be deemed a proper one.

“The object of the legislation referred to is the relief of paupers and to prevent them becoming a charge upon the public. It would be against public policy to permit a lazy or worthless child to filch money out of an industrious or provident parent or grandparent, simply because such parent may have money and the child have none. If the law should go so far, all inducement for the children of the well-to-do to care for themselves as a necessity for support would be lost, and parental effort to impart habits of industry and thrift to children would be neutralized. The result to the social condition would be serious, as there would grow up a large class of population dependent upon others, and, in the hour when such support should fail, utterly incapable of self-support. Logically, crime would appear the easiest road to relief, and society would pay the penalty.

“Our legislation is founded upon the poor laws of England. As Justice Reed declared, they originated in the statute of 43 Eliz., C. 2, which specified the class entitled to relief as ‘poor, old, blind, lame and impotent persons, or

¹⁸ *Mount Pleasant Overseers v. Wilcox*, 12 Pa. C. C. R. 417.

other poor persons not able to work:’ *Wertz v. Blair Co.*, 66 Pa. 18.

“Whenever our acts describe the persons so entitled to relief, invariably they are of this class. Thus the act of 1836 mentions ‘poor persons’; the act of June 6, 1893, ‘needy and indigent poor,’ and the twenty-ninth section of the act of 1836 refers to the desertion of children, ‘leaving them a charge upon the district.’

“Hence, in Luzerne county, his honor, Judge Rice, now the learned president of the superior court, held, that in a proceeding of this nature, the allegation and proof that the person for whom relief is claimed was and is a pauper, is essential. The mere fact that he is a son of the defendant, it not appearing that he is a minor, would not be sufficient to make the defendant liable: *Central Poor District of Luzerne Co. v. Hirner*, 5 Kulp, 265.

“‘A pauper is one so poor that he must be supported at the public expense,’ is the definition we find in *Bouvier’s Law Dictionary*, and we have no doubt that the references to poor persons in our act all have regard to and concern for such alone.

“It appeared from the evidence that the petitioner, during the last four years, had received some \$6,000, which, according to his testimony, he has spent. There is nothing in his appearance to indicate that he is likely to become a public charge. He now has a comfortable home in the family of a relative by marriage, and when sick, it is shown, received the attention of a capable and skilled physician. It is true the respondent is a person of means, but it does not follow that she is required, upon demand, to share it with a son who, while giving his testimony upon the stand, betrayed such want of respect for his parent as to warrant the inference that if abundance was withheld from him, she understood better than he his undeserving. It is the mother’s nature that the obedient and faithful child will never suffer so long as she has the means to relieve. Perhaps, if this lesson is observed in

this case, the relief will be ample. The evidence has failed to show such a case of need within the law as will warrant the court in making an order.”¹⁹

Liability of Children for Burial Expenses of Parents—Application for Order on Guardians to Pay Funeral Expenses.

“The grandmother of Henry Clay Roberts died without leaving sufficient estate to pay her funeral expenses and some necessary expenses which were incurred in her last sickness, the whole not exceeding \$200. Her grandson has an estate in the hands of his guardian, and otherwise, amounting to over \$3,000. The guardian is willing to pay the expenses referred to, if the court will make a decree authorizing him to do so, and the grandchild, now of the age of eighteen years, unites in asking such decree.

“The question presented is, Whether the grandchild, under the requirement to ‘relieve and maintain,’ in the act of assembly referred to, can be required to pay funeral expenses.

“There is no direct decision of the question, so far as we are aware, but there are utterances of the supreme court which have a bearing thereon. In Rick’s Ap., 78 Pa. 432, a bequest was to a wife of the interest of \$1,000, ‘and should the interest be insufficient to provide for her, then as much of the principal as should be required.’ The interest was insufficient for her support. The court, after her death, ordered that the executors of the husband should appropriate so much of the \$1,000 as was required to pay the amount owing by her for necessities, and also to pay her funeral expenses, the court treating the bequest to her of so much of the principal as might be required to provide for her, as including the expenses of her burial.

“In another case, *Bair v. Robinson*, 16 W. N. C. 57, the question was whether, under the married woman’s act of 1848, funeral expenses were included under the phrase ‘neces-

¹⁹ Clements’ Petition, 18 Pa. C. C. R. 71.

saries for the support and maintenance of the family,' so as to require a married woman, who had contracted therefor, to pay the funeral expenses of a member of the family. The supreme court held that necessities for the support and maintenance of the family not only included food, shelter, and clothing for its members while well, and proper medical attendance and nursing while sick, but also the expenses of the burial when dead, and that the married woman, having contracted for such funeral expenses, was, in the absence of ability on the part of the husband, legally bound to pay them.

"In *Shield's Est.*, 2 Chester Co. R. 473, decided by this court, we held that an ante-nuptial contract which provided for a comfortable home and living for the wife, out of the estate of the husband, during the period the wife might survive him, included the expenses of her burial.

"We are of opinion that the words 'relieve and maintain,' as used in the act of 1836, in relation to the poor, authorize us to require the grandchild to pay the funeral expenses incurred in the burial of his deceased grandmother, as well as the necessary expenses incurred during her sickness, she leaving no sufficient estate to pay the same, and he possessing sufficient ability for that purpose." ²⁰

Jurisdiction Under Acts of 1836 and 1857.

"The act of 1836, relating to the support and employment of the poor, and its supplement of April 15, 1857, do not authorize an appeal from the order of the quarter sessions for support. Hence, the supreme court cannot review the evidence, but is restricted to an examination of the record.

"To sustain an order of support under said act the record must show that the quarter sessions had jurisdiction of the party and the subject-matter.

"In order to give jurisdiction to the quarter sessions to make such order, the petition must be by the overseers of

²⁰ *Roberts's Estate*, 2 Pa. C. C. R. 647.

the poor, or by any other person having an interest in support of the poor person, or by the latter himself, such an interest is essential, although the act is silent as to its kind or extent.

"No commitment can be made of the person upon whom the order is made, for the purpose of enforcement."²¹

Residents of Other Counties Amenable.

"A resident of one county is amenable to the quarter sessions of another in which the charge of desertion is made. Complaints of desertion and decrees in favor of defendant in the Lancaster county sessions in 1867 were not a bar to a complaint in Berks county in 1871.

"A grandfather sued a father in Lancaster county for maintenance of his children, and obtained an award, which was appealed from. This was no bar to the proceedings against the father on complaint of the grandfather in the sessions of Berks, for desertion and maintenance of the children.

"On complaint by a grandfather against the father for desertion and maintenance, a decree could not be made against the defendant in favor of the complainant for a sum of money for past maintenance; the complainant's remedy for that was by action. A defendant willing to take his children and maintain them is entitled to their custody, and should not be compelled to pay another for their support."²²

Act of June 25, 1895, P. L. 269. P. & L. Dig. Sup. 466, § 8.

Additional Remedy to Compel Children to Support Indigent Parents.

Section 1. In addition to the remedies now provided by law, if any child of full age, being within the limits of this commonwealth, has neglected or hereafter without reasonable cause shall neglect to maintain his or her parents not

²¹ James' Appeal, 19 W. N. C. 369.

²² Keller v. Commonwealth, 71 Pa. 413.

able to work or of sufficient ability to maintain themselves, it shall be lawful for any alderman, justice of the peace or magistrate of this commonwealth, upon information made before him, under oath or affirmation, by said parent or parents, or by any other person or persons, to issue his warrant to any police officer or constable for the arrest of the person against whom the information shall be made as aforesaid, and bind him or her over, with sufficient surety, to appear at the next court of quarter sessions, there to answer the charge of not supporting his or her parent or parents.

Section 2. The information and proceedings thereon shall be returned to the present or the next court of quarter sessions, when it shall be lawful for said court, after hearing, to order the person against whom complaint has been made, being of sufficient ability, to pay such sum as said court shall think reasonable and proper for the comfortable support and maintenance of the said parent or parents, not exceeding fifty dollars per month, and to commit such person to the county prison, there to remain until he or she complies with such order or gives security by one or more sureties, to the commonwealth, and in such sum as the court shall direct, for the compliance therewith.

Section 3. The costs of all proceedings by virtue of this act shall be the same as are allowed by law in cases of desertion or non-support of wife and children, and all proceedings shall be in the name of the commonwealth.

Section 4. Should any person against whom an order shall be made by virtue of this act abscond, remove or be found in any other county of the commonwealth than the one in which said warrant shall issue, he may be arrested therein by said warrant being backed by an alderman or justice of the peace or magistrate of the county in which such person may be found, as is now provided for backing warrants by the third section of the act of thirty-first of March, one thousand eight hundred and sixty.

Section 5. The inability of the parent or parents to relieve

and maintain themselves shall be taken into consideration by the court, and whenever the court shall, under the second section of this act, commit the person complained of to the county prison, there to remain until he comply with their order or give security, et cetera, it shall be lawful for the said court, at any time after three months, if they shall be satisfied of the inability of such person to comply with the said order to give such security, to discharge him from prison.

CHAPTER XIX.

DESERTION.

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Desertion of Wife or Children. P. & L. Dig. 3545, § 134.

Act of 1836, Section 29. If any person shall separate himself from his wife, without reasonable cause, or shall desert his children, or if any woman shall desert her children, leaving them a charge upon the district, in any such case it shall be lawful for any two magistrates of the county, upon complaint made by the overseers of the district, to issue their warrant to such overseers, therein authorizing them to take and seize so much of the goods and chattels, and to receive so much of the rents and profits, of the real estate of such man or woman, as in the judgment of the said magistrates shall be sufficient to provide for such wife, and to maintain and bring up such children, which sum or amount shall be specified in such warrant; but if sufficient real or personal estate cannot be found, then to take the body of such man (or woman), and bring him (or her) before such magistrates, at a time to be specified in such warrant.

The words of the thirtieth section of the act of March 9, 1771, 3 Smith, 344, were "separate and desert," but the law was held in the disjunctive.

Seizure of Property for Desertion.

"Overseers of the poor have jurisdiction where a man deserts his wife, though she has no children. It is not necessary that the defendant should have notice of such case previous to the seizure of his property.

"Nor that he should be bound over to the sessions, or process issued to bring him in.

"The township may proceed by seizure to indemnify themselves without the wife's consent.

"The defendant has a right to prove to the quarter sessions that he had not deserted his wife, but she had deserted him.

"In proceedings against a husband for desertion, etc., a certiorari lies from the supreme court to the sessions to remove their order.

"The jurisdiction of the supreme court is only taken away by express words, or irresistible implication."¹

By a special act, approved April 11, 1848, P. L. 532, the guardians of the poor of the city of Pittsburg may issue such warrant in their own name, and proceed as aforesaid.

May Take Security for Appearance at Court. P. & L. Dig. 3546, § 135.

Act of 1836, Section 30. It shall be lawful for such magistrate, on the return of such warrant, to require security from such man or woman, for his or her appearance at the next court of quarter sessions of the county, there to abide the order of the court; and for want of such security, to commit such person to the jail of the county.

"The law does not provide for the imprisonment of a person who is charged with the support of the pauper, except when there is no property of such person out of which the support can be raised by the process.

"In this case there was an abundance of property, and it

¹ *Overseers v. Smith*, 2 S. & R. 363.

had been taken into the custody of the law; it is not given in such circumstances.

"Proceedings affirmed, except the order of imprisoning the defendant for contempt, and that is reversed."²

Warrant Must be Returned to Quarter Sessions. P. & L. Dig. 3546, § 136.

Act of 1836, Section 31. The warrant aforesaid shall be returned to the next court of quarter sessions of the county, when it shall be lawful for the court to make an order for the payment of such sums as they shall think reasonable for the purpose aforesaid, and therein authorizing the overseers to dispose of the goods and chattels aforesaid, by sale or otherwise, and collect and receive the rents and profits aforesaid, or so much of either as in the judgment of the court shall be sufficient for the purpose aforesaid, but if there be no real or personal estate, it shall be lawful for the court to commit such person to the jail of the county, there to remain until he or she shall comply with such order, give security for the performance thereof, or be discharged by due course of law.

The law considers such desertion an offence.³

There was a similar provision in the act of March 31, 1812.⁴

A husband who, by cruel usage, compels his wife to withdraw from his habitation, is liable to proceedings for desertion.⁵

And a wife in such case is a competent witness to prove the marriage.⁶

The reasonable cause which relieves a husband from a warrant, is only such as will relieve him from the legal duty of maintenance, and he can only be relieved from the maintenance of his wife, for reasons or causes, that would entitle him to a divorce.⁷

² Jones v. Commonwealth, 2 Phila. 291.

³ Commonwealth v. Keeper of the Jail of Phila., 4 S. & R. 506.

⁴ 5 Sm. Laws, 191. ⁵ Directors v. Mercer, 2 Penna. L. J. R. 75.

⁶ Guardians v. Nathans, 2 Pa. 138.

⁷ Sterling v. Commonwealth. 2 Grant. 162; Commonwealth v. Shafer, 1 Luz. Leg. Reg. 22.

Proceedings may be had before one magistrate in Philadelphia by act of April 14, 1853, Section 8, P. L. 418. And by act of April 9, 1872, P. L. 1004, the aldermen of Philadelphia are required to make monthly returns to the city solicitor.

It is not necessary that a wife and child should be declared paupers, in due form of law, to authorize proceedings against the husband for maintenance.⁸

The complaint must be made by the overseers, not by the wife.⁹

But since the act of April 13, 1867, P. L. 78, "an act for the relief of wives and children, deserted by their husbands and fathers, within this commonwealth," a wife or child may make complaint, before a single magistrate, whose duty it is to issue his warrant, and upon arrest of the offender, to bind him over to appear at the next court of quarter sessions, there to answer the said charge.

"The act entitled, 'An act for the relief of wives and children, deserted by their husbands and fathers within this commonwealth,' and its provisions are expressly declared to be 'in addition to the remedies now provided by law'—referring to those enacted by the general poor law of June 13, 1836, and it may be by the act of March 31, 1812, P. L. 253, relating to this county (Philadelphia). These remedies are at the instance of the guardians or overseers of the poor for the purpose of indemnifying the district in which the wife or child has a settlement against the charge. But the act of 1867 provides a remedy for the wife or child, and enacts that the process for the arrest of the husband shall be issued by any alderman or justice of the peace upon information by the wife or children, or either of them, or by any other person or persons. The warrant issues to the sheriff or to any constable for the arrest of the person against whom the in-

⁸ *Sterling v. Commonwealth*, 2 Grant, 162.

⁹ *Commonwealth v. Nathans*, 2 Pa. 138.

formation is made, and he is to be bound over to appear at the next court of quarter sessions, there to answer the charge of desertion. It is enacted by the fourth section that if such person shall abscond, remove, or be found in any other county, he may be arrested by the warrant being backed in the mode provided for backing warrants by the third section of the act of March 31, 1860. There is nothing whatever to confine the jurisdiction of the offence to the court of the county where the defendant has his residence or settlement. The whole scope and purview of the statute is inconsistent with such an intention. By the second section the information, proceedings thereon, and warrant shall be returned to the next court of quarter sessions, evidently of the county in which the warrant issued, and to which the offender is bound to appear, by the magistrate before whom the information was laid. Our brother, Agnew, had occasion to consider this question on a habeas corpus granted by him for the body of this child, and came to the conclusion we have now expressed upon the proper construction of this act of 1867."¹⁰

"Maintenance is the sole object of the act, and when the father is really willing to maintain his child at home, and makes a *bona fide* claim for this purpose, I see no reason why he shall not recover its custody, perform his duty, and go into the quarter sessions to obtain a suspension of the order, and in the end a vacation of the decree, on satisfying the court that he is maintaining it properly. The law should not receive a construction which would take from him *locum penitentia*, or prevent a return of parental duty. Such a construction would separate families beyond recall, and instead of a future gilded by hope, would make it dark and rayless forever."¹¹

The warrant must direct how much is to be seized.¹²

¹⁰ Demott v. The Commonwealth, 64 Pa. 302.

¹¹ Commonwealth ex rel. Elihu Demott v. Emma Demott and Henry Barndt, 64 P. S. R. 306.

¹² Guardians v. Picard, 1 S. & R. 239.

The authority to seize goods and chattels does not include "choses in action," which are not liable to seizure under the warrant; but a lease for years is a chattel real, and may be seized.¹³

For Schuylkill county there is a special act authorizing the directors of the poor to make the complaint before one justice of the peace, and also seize rights and credits: Act April 1, 1870, P. L. 777.

Property held by the wife as administratrix cannot be seized and sold.¹⁴

Discharge by Insolvent Court.

"The sentence prior to the defendant's insolvency was not discharged by the discharge of his person from arrest. The order of the insolvent court affected nothing but the payments then due, and certainly did not discharge him prospectively from duties to accrue. For the latter he remained liable by force of the sentence, as if he had not become an insolvent debtor; consequently, the first sentence, remaining as it did unreversed, was a bar to any new proceeding."¹⁵

It is error for the quarter sessions, upon the hearing of a defendant, who was bound over to answer a charge of deserting his wife, to order payment of a weekly sum for the support of his wife, and a further weekly sum for the support of his child; the order must be limited to the original charge.¹⁶

The authority given by the sixth section of the act of March 31, 1812, to two aldermen, to determine the amount of property to be taken under a warrant of seizure, cannot be delegated to the guardians of the poor.¹⁷

"Justices of the peace have jurisdiction where a man deserts his wife, though she has no children. And the town-

¹³ *Sterling v. Commonwealth*, 2 Grant, 162.

¹⁴ *Guardians v. Roberts*, 5 S. & R. 112.

¹⁵ *Newhouse v. Commonwealth*, 5 Wh. 83.

¹⁶ *Anthony's Appeal*, 3 Pitts. L. J. 420; 2 Phila. 155.

¹⁷ *Guardians v. Picard*, 1 S. & R. 238.

ship may proceed by seizure to indemnify themselves without the wife's consent. The defendant has a right, however, to prove to the quarter sessions that he had not deserted his wife, but that she had deserted him. The seizing of a man's property and exposing it to sale in a summary way, is matter of great importance, and the act of assembly forbids it to be done, until the order of the two justices is confirmed by the sessions. Why is this confirmation required if the party is not to be heard? Or is it supposed that in every instance when a wife lives separate from her husband his property may be seized and sold for her support, be the fault where it may; even though he expresses his willingness to maintain her, if she will come home and do her duty? This, indeed, has been contended for; but the law is not so, and bad would it be if it were. The act recites that men sometimes separate themselves from their wives without reasonable cause, and then authorize a warrant of seizure, where a wife shall be so left or neglected; that is, without such reasonable cause. The quarter sessions ought, therefore, to have heard the evidence, and had no right to confirm the order without hearing it." Tilghman, C. J.

In the same case, Yeates, J., said: "I take it to be within the plain provisions of the thirtieth section of the poor law of March 9, 1771, that the estates of husbands who have separated themselves from their wives without reasonable cause, shall contribute to their maintenance, although they have no children. At the same time, I cannot think that a husband's being confined in gaol necessarily constitutes a case of separating from his wife, and desertion of her without reasonable cause. It is obvious that a man may be restrained of his liberty from a variety of circumstances out of his power of control. The act does not contemplate process being issued to bring in the delinquent husband or wife, previously to the warrant of seizure, because it most frequently happens that the persons thus neglecting their marital duties change their place of abode and cannot be found. The in-

jured party would therefore be without remedy, if the service of such process was indispensably necessary in the first instance.

"Whether this husband or wife was most in fault as to their family differences and separation, has not been determined by any tribunal, on a full hearing of the parties, with their several proofs. The order of seizure of the two justices of the peace was merely founded on the complaint of the overseers of the poor, and the representation of the wife. One thing is evident, that the husband has not been heard in his defence. And when his counsel in the sessions offered to prove that he did not separate himself from his wife without reasonable cause, and that his wife deserted him, and withdrew herself from his protection, without any reasonable cause, the testimony was overruled, after nearly two months' consideration of the subject. This appears to me the grossest injustice! No man should be condemned unheard. . . . It would be a most unfortunate circumstance for many husbands if such a doctrine were adopted by this court." ¹⁸

Real Estate Seized is Subject to Prior Claim.

Though real estate of an absconding husband has been seized by the guardians of the poor for the use of his wife and children, and the proceedings confirmed by the quarter sessions, yet the trustees afterwards appointed, in consequence of a domestic attachment issued against the husband, may recover such estate in ejectment for the use of those creditors of the husband whose claims existed previously to such seizure.

Tilghman, C. J.: "The guardians of the poor hold the house and lot now in dispute, as the property of Enoch Thomas, for the maintenance of his family. And the domestic attachment operates on the same object as the property of the same person. Where, then, is the inconsistency

¹⁸ Overseers v. Smith, 2 S. & R. 362.

of these two proceedings, and where is the conflict between the two jurisdictions? I can see none. The quarter sessions had a right to appropriate this property to the support of the husband's family until some better title was shown. But it has no more right to protect it against a third person who should have brought an ejectment, and shown that he had a good title, and that Enoch Thomas never had title. Nor has the court of quarter sessions assumed any such power. It has only authorized the guardians of the poor to receive the rents and profits for the support of the wife and child, subject to the rights of all other persons. The guardians of the poor have no better right than Enoch Thomas himself had; whoever, therefore, could have recovered against Thomas may recover against them. I speak not now of creditors whose claims may have accrued after the property had been seized by the guardians of the poor; nor of cases where property had been sold by the guardians of the poor, before it was attached by the creditors. These might be distinguished from the present case. But I give no opinion on them."¹⁹

"Under the act of June 13, 1836, 'relating to the support and employment of the poor,' the proceedings to secure property for the benefit of the wife, after desertion by her husband, may be instituted on an information made by a single director of the poor.

"In a proceeding against a husband who has deserted his wife under the act of June 13, 1836, it is too late, after a hearing on the merits, to set aside the warrant for a mere defect of form.

"The fact of the charge of desertion, to enable the seizing of the husband's property, under the act of June 13, 1836, does not pass into judgment before the two justices, but comes up, on return of the warrant, before the quarter sessions for final decree.

¹⁹ Thomas v. McCready et al., 5 S. & R. 386.

"The terms 'goods and chattels' in the act of June 13, 1836, do not include choses in action; hence they cannot be seized on a warrant against a husband for deserting and refusing to maintain his wife.

"A lease for years is a chattel real in possession, and is subject to levy and sale on a *fi. fa.* at common law, and hence may be seized on a warrant against the husband for deserting and refusing to maintain his wife, under the act of June 13, 1836." ²⁰

Attachment of Funds in Orphans' Court.

"The guardians of the poor of the city of Philadelphia issued a warrant of seizure, under the act of March 31, 1812, 5 Sm. Laws, 392, against the defendant, and attached all moneys, rights and credits of the defendant in the hands of the executors of William Brennan, deceased. The warrant proceedings therein are returned to the court of quarter sessions and confirmed. Interrogatories were filed and served on the garnishees, who, by their answer, admit that they have the sum of \$264.34, which was awarded to William Brennan, the defendant, by an adjudication of the orphans' court, duly confirmed, and that the same is still in their hands. They resist the entry of a judgment upon their answer, alleging that while, prior to the adjudication, the attachment might have been enforced, they are protected from a judgment against them by the decree of the orphans' court, which requires and only permits them to pay the money to the defendant. They, therefore, insist that the remedy of the guardians lies in obtaining a modification of the order of the orphans' court. In this position we think the defendants are in error.

The act of March 31, 1812, is still in force, and it has been held lawful to thus seize the husband's estate and apply it to the support of his wife: *Com. v. Nathans*, 2 Pa. 138; *Decker*

²⁰ *Sterling v. Commonwealth*, 2 Grant, 162.

v. Directors of the Poor, 120 Pa. 272; *Board of Charities v. Moore*, 19 Phila. 540.

"In answer to the position that the decree of the orphans' court ties the hands of the executors, it may be said that the effect of the decree was to make the garnishees liable as personal debtors to the defendant as well as in their official capacity. Thus it is said whenever a probate court has ordered the payment of a creditor's claim against the estate, or where the estate has been fully administered upon, the officer's accounts settled, and an order for distribution made to the legatees or other distributees, the executor or administrator thereupon becomes personally liable for the payment thereof, and he may be summoned in his individual capacity. See *Amer. Ency. of Law*, Vol. 8, title Garnishment, p. 140, and cases there cited.

"Under our attachment acts there is no question of such liability. It has been held, in express terms, that the statute has made the administrator or executor liable to garnishment.

"The effect of the statutes is to divest the claimant against such estate of the distributive share and award payment thereof to the creditors: *Strong's Executors v. Bass*, 35 Pa. 333.

"In the case of *McCreary v. Topper*, 10 Pa. 419, it was said that the distributive share became subject to execution when it became palpable by sense of judgment by the settlement of the administrator's accounts, and thereafter became a debt due from the administrator to the distributee.

"The conclusion is therefore irresistible that an incident of the decree of distribution is to make the administrators liable personally to the distributee, and therefore to make them answerable in an attachment for the amount in their hands."

Judgment was entered on the answers for such as was due.²¹

²¹ *Philadelphia v. Brennan et al.*, 18 Pa. C. C. R. 59.

Defendant Cannot be Sentenced to Support Any Person not Named in Complaint.

"George Anthony was brought before an alderman on a complaint by the guardians of the poor, charging him with deserting his wife, leaving her likely to become chargeable as a pauper. He was required to give security for his appearance at the court of quarter sessions. The court, on hearing, ordered him to pay for the support of his wife \$1.50 per week, 'and for the support of his child the sum of \$1 per week, and to give security for the performance of the order. It does not appear that he was charged with deserting his child, or that he had any notice that he was to answer such a charge in the quarter sessions. He came there to answer the charge of deserting his wife. There was error on requiring the payment of money for the support of the child. If that shall be necessary, it can be made the subject of a new proceeding. The child might have been included in the original charge when the warrant was taken out; but, as it was not, it could not be introduced for the first time in the quarter sessions. So much of the decree as referred to the child was stricken out.'" ²²

²² Anthony's Appeal, 2 Phila. 155.

CHAPTER XX.

VAGRANCY.

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Defining Vagrancy. P. & L. Dig. 3560, § 166.

Act of 1836, Section 32. The following described persons shall be liable to the penalties imposed by law upon vagrants:

I. All persons who shall unlawfully return into any district, whence they have been legally removed, without bringing a certificate from the city or district to which they belong.

II. All persons who, not having wherewith to maintain themselves and their families, live idly and without employment, and refuse to work for the usual and common wages given to other laborers in like work, in the place where they then are.

III. All persons who refuse to perform the work which shall be allotted to them by the overseers of the poor as aforesaid.

IV. All persons going about from door to door, or placing themselves in streets, highways, or other roads, to beg or gather alms, and all other persons wandering abroad and begging.

V. All persons who shall come from any place without this commonwealth to any place within it, and shall be found loitering or residing therein, and shall follow no labor, trade, occupation, or business, and have no visible means of sub-

sistence, and can give no reasonable account of themselves, or their business in such place.

In addition to the foregoing section, portions of the act of February 21, 1767, are still in force.

Mr. Dunlop, in his Laws of Pennsylvania, says: "The preamble and Section 1 of this act (1767), describing vagrants, is supplied by the thirty-second section of June 13, 1836, relating to the poor," but Mr. Brightly still retains a portion of Section 5 of said act, and relates to the punishment of offenders, and reads as follows:

I. It shall and may be lawful for any justice of the peace of the county, where such idle or disorderly persons shall be found, to commit such offenders (being thereof legally convicted before him, on his own view, or by the confession of such offenders, or by the oath or affirmation of one or more credible witnesses) to the workhouse of the said county, if such there be, otherwise, to the common jail of the county, there to be kept at hard labor, by the keeper of such workhouse or jail, for any time not exceeding one month.

Duties of Constables.

II. If any person shall be found offending in any township or place against this act, it shall and may be lawful for any constable of such township or place, and he is hereby enjoined and required, on notice thereof given him by any of the inhabitants thereof, to apprehend and convey, or cause to be conveyed, such person so offending to a justice of the peace of the county, who shall examine and try such offenders, and on such confession or proof, shall commit them to the workhouse or gaol of the county, there to be kept at hard labor during the term aforesaid. And if any constable, after such notice given as aforesaid, shall refuse or neglect to use his best endeavors to apprehend and convey such offenders before the justice of the peace aforesaid, being thereof legally convicted before such justice of the peace, every such constable shall forfeit and pay to the overseers of the poor of the township or place where such offense shall be committed, to the use of the poor thereof, the sum of ten shillings, to be levied by distress and sale of the offender's

goods, by warrant from such justice, and the overplus, if any, after the charge of the prosecution and of such distress shall be satisfied, shall be returned to such offender.

Parties may Appeal.

III. Any person or persons who shall conceive him, her or themselves aggrieved by any act, judgment or determination of any justice or justices of the peace out of sessions, in and concerning the execution of this act, may appeal to the next general quarter sessions of the city or county, giving reasonable notice thereof, whose order thereupon shall be final.

Punishment of Vagrants in Philadelphia.

Act of March 22, 1836, Section 6, P. L. 175, provides: That all persons who may be convicted, according to the existing laws of this commonwealth, before the mayor, recorder, or any alderman of the city of Philadelphia, or before any alderman or justice of the peace of the county of Philadelphia, as a vagrant or disorderly person, shall be sentenced to suffer confinement, at suitable employment, in the vagrants' apartment of the city and county of Philadelphia, for the term of one month, and be fed, clothed and treated as convicts in the Philadelphia county prison are directed to be fed, clothed and treated.

We now come to the laws commonly called the "tramp acts," from the fact that they were passed for the suppression of a class of vagrants which have become an almost intolerable nuisance in many counties of the commonwealth, the first of which is that of May 8, 1876, P. L. 154, entitled:

An Act to Define and Suppress Vagrancy. P. & L. Dig. 3560, § 167.

Section 1. Be it enacted, etc., That the following described persons are hereby declared to be vagrants:

I. All persons who shall unlawfully return into any district whence they had been legally removed without bringing a certificate from the proper authorities of the city or district to which they belong, stating that they have a settlement therein.

II. All persons who shall refuse to perform the work which

shall be allotted to them by the overseers of the poor as provided by the act of June 13, 1836, entitled "An act relating to the support and employment of the poor."

III. All persons going about from door to door or placing themselves in streets, highways, or other roads, to beg or gather alms, and all other persons wandering abroad and begging who have no fixed place of residence in the township, ward or borough in which the vagrant is arrested.

IV. All persons who shall come from any place without this commonwealth to any place within it, and shall be found loitering or residing therein, and shall follow no labor, trade, occupation or business, and have no visible means of subsistence, and can give no reasonable account of themselves or their business in such place.

Section 2. If any person shall be found offending in any township or place against this act, it shall and may be lawful for any constable or police officer of such township or place, and he is hereby enjoined and required, on notice thereof given him by any of the inhabitants thereof, or without such notice on his own view, to apprehend and convey, or cause to be conveyed, such person to a justice of the peace or other committing magistrate of the county, who shall examine such person and shall commit him, being thereof legally convicted before him, on his own view or by the confession of such offenders, or by the oath or affirmation of one or more creditable witnesses, to labor upon any county farm, or upon the roads and highways of any city, township or borough, or in any house of correction, poor house, workhouse or common jail, for a term not less than thirty days, and not exceeding six months, and shall forthwith commit him to the custody of the steward, keeper or superintendent of such county farm, house of correction, poor house, workhouse or common jail, or to the supervisors or street commissioners, and overseers of the poor of the respective county, city, borough or township wherein such person shall be found, as in his judgment shall be deemed most expedient; the said justice of the peace or committing magistrate in every case of conviction shall make up and sign a record of conviction, annexing thereto the names and records of the different witnesses examined before him, and shall, by warrant, under hand, commit such person as aforesaid: Provided, Any person or persons, who shall conceive him, her or themselves

aggrieved by any act, judgment or determination of any justice of the peace or alderman in and concerning the execution of this act, may appeal to the present or next general quarter sessions of the city or county, giving reasonable notice thereof, whose orders thereupon shall be final.

Section 3. That it shall be the duty of the custodian or custodians of any such vagrant, to make active efforts to provide work for every vagrant committed under this act, and not disqualified by sickness, old age, casualty; and whenever labor cannot be provided in the place to which any vagrant is committed, it shall be lawful for such custodian or custodians, and it is hereby declared to be his or their duty, with the approval of the board of directors, overseers, guardians, or commissioners of the poor, as the case may be, to contract with the proper authorities of any such township, borough, city, county, or other persons, to do work or labor outside the place of commitment; in all cases the work or labor shall be suited to the proper discipline, health and capacity of such vagrant, and he shall be fed and clothed in a manner to the nature of the work engaged in and the condition of the season: and when any vagrant is committed under the provisions of this act to the custody of the supervisors or street commissioners and overseers of the poor of any township, borough, city or county, it shall be their duty to provide for him comfortable lodging or quarters, either in a station-house or other building; the violation or neglect of any of the provisions of this section shall be deemed to be a misdemeanor, and the person so offending, on conviction thereof, in the proper court, shall be sentenced to undergo an imprisonment for a term not exceeding three months, and to pay a fine not exceeding one hundred dollars, either or both, in the discretion of the court.

Section 4. If any person not being in the county, township or place in which he usually lives or has his home, shall apply to any director, overseer, guardian or commissioner of the poor of any county, city, borough, township or district, stating that he is desirous to return to his home, but is poor and has not the means to do so, the said director, overseer, guardian or commissioner of the poor may employ or let out such poor person to labor at some suitable place to be by them selected, and at such wages as shall seem to them just, and when, in the opinion of said director, overseer, guar-

dian or commissioner of the poor such poor person shall have earned a sufficient sum, said director, overseer, guardian or commissioner of the poor shall, with the money so earned, and with such addition thereto from the treasury of the county, city, borough, township or district as they may think reasonable, cause such person to be returned to his home whether in this state or elsewhere: Provided, That the expense shall not exceed \$20.

Section 5. That the custodian or custodians of such vagrant may at discretion discharge such vagrant at any time within the time of commitment upon not less than ten days' good behavior, or upon satisfactory security that he shall not become a charge upon the public within one year from the date of such discharge.

Section 6. That the county commissioners of every county in which there shall not be sufficient provision for the safe custody of persons committed under this act, upon the recommendation of a grand jury of the county and approval of the court, are hereby empowered and required to make suitable provisions by buildings or enclosures: Provided, That the expense of the same shall not exceed the amount fixed by the grand jury.

Section 7. That for each arrest, hearing or commitment made under this act there shall be paid out of the county treasury to the committing magistrate and officer making such arrest or commitment, and the same fees and mileage as now provided by law for like services in other cases of arrest, hearing and commitment; and no such person shall be detained beyond the term of his commitment by reason of his inability to pay the costs of his arrest, hearing and commitment, but shall forthwith be discharged by the officer in whose custody he may be; any willful refusal to make such arrest on the part of any constable or police officer shall subject him to a penalty of \$10, to be collected as penalties are by law collectible, and shall be paid into the poor fund of the district in which the officer resides.

Section 8. That all poor houses, almshouses and other places provided for the keeping of the poor are hereby declared to be workhouses for the purposes of this act, and it is hereby made the duty of the custodians of such buildings to provide work for such vagrants and to compel them to work therein, when able, not less than six hours per day.

Section 9. That the custodian of any vagrant upon his discharge and at his request, shall give him a certificate of discharge, which shall exempt him from any further arrest for vagrancy for a period of five days, upon condition that he shall forthwith leave the county wherein confined, and the said custodian is hereby authorized to give in his discretion to such discharged vagrant a reasonable sum of money out of his earnings or out of the treasury of the township, city, or county to defray his expenses in leaving the county as aforesaid.

Section 10. That all acts or parts of acts inconsistent herewith be and the same are hereby repealed.

By comparing the first section of the foregoing act with the thirty-second section of the act of June 13, 1836, we perceive that they are almost identical, and that what follows in the act of 1876 simply enlarges the powers for the suppression of vagrancy.

The seventh section of the act of 1876 is amended by a supplement, passed May 3, 1878, P. L. 40, fixing the fees of the committing magistrate and the officer making the arrest at fifty cents each, and imposes a penalty of five dollars on any constable or police officer refusing to make an arrest.

Then follows another act, entitled "An act to define and punish tramps," approved April 30, 1879, P. L. 33, which we insert in full.

Definition and Punishment of Tramps. P. & L. Dig. 4781, § 15.

Section 1. Be it enacted, etc., That any person going about from place to place, begging, asking or subsisting upon charity, and for the purpose of acquiring money or a living, and who shall have no fixed place of residence or lawful occupation in the county or city in which he shall be arrested, shall be taken and deemed to be a tramp and guilty of a misdemeanor, and on conviction shall be sentenced to undergo an imprisonment by separate and solitary confinement at labor, in the county jail or workhouse, for not more than twelve months in the discretion of the court: Provided, That if any person so arrested can prove by satisfactory evidence that he does not make a practice of going about begging or sub-

sisting upon alms, for the purpose aforesaid, in the manner above set forth, he shall not be deemed guilty of the offense hereinbefore described, and upon such proof shall be discharged from arrest, either by the magistrate before whom he was committed, or by the court upon hearing of the case upon writ of habeas corpus.

Certain Acts by Tramps, Misdemeanors. P. & L. Dig. 4782, § 16.

Section 2. Any tramp who shall enter any dwelling-house, against the will or without the permission of the owner or occupant thereof, or shall kindle any fire in the highway, or on the land of another without the owner's consent, or shall be found carrying any firearms or other dangerous weapon, with intent unlawfully to do injury to or intimidate any other person, which intent may be inferred by the jury trying the case, from the facts that the defendant is a tramp and so armed, or shall do or threaten to do any injury not amounting to a felony to any person, or to the real or personal estate of another, shall upon conviction be deemed guilty of a misdemeanor, and shall be sentenced to undergo an imprisonment by separate or solitary confinement at labor for a period not exceeding three years.

Act of Vagrancy Prima Facie Evidence. P. & L. Dig. 4782, § 17.

Section 3. Any act of beggary or vagrancy by any person described by the first section of this act shall be *prima facie* evidence that the person committing the same is a tramp within the meaning of this act, subject to the provision contained in the first section of this act.

Arrest of Tramps. P. & L. Dig. 4782, § 18.

Section 4. Any person upon view of any offense described in this act, may apprehend the offender and take him before a justice of the peace or alderman, whose duty it shall be, after hearing the evidence, to discharge or to commit the prisoner for trial, as in the case of other misdemeanors.

Act not to Apply to Certain Persons. P. & L. Dig. 4782, § 19.

Section 5. This act shall not apply to any female or minor under the age of sixteen years, nor to any blind, deaf or dumb

person; nor shall it be applicable to any maimed or crippled person who is unable to perform manual labor.

Section 6. This act shall take effect on and after August fifteenth, one thousand eight hundred and seventy-nine, and all acts or parts of acts inconsistent herewith are hereby repealed.

Then follows "An act to regulate the fees of justices of the peace and constables of the several counties of the commonwealth," approved May 19, 1879, P. L. 64, fixing the fees of the justices of the peace for all acts in and about the commitments of vagrants, at twenty-five cents, and that of the constables, for every act in and about the arrest or commitment at twenty-five cents for each vagrant so arrested and committed, and mileage as is allowed by law for other services.

"An act repealing the first section of an act, entitled 'An act to prevent the mischiefs arising from the increase of vagabonds and other idle and disorderly persons within this province,' passed the twenty-first day of February, one thousand seven hundred and sixty-seven," was approved May 17, 1883, P. L. 35, and finally,

"An act to authorize in cities of the first class, wherever wayfarers' lodges shall be established therein, the commitment of persons to the house of correction as vagrants, who shall obtain shelter and food from such lodges, and who shall refuse to perform work in return therefor when physically able to work," was passed June 13, 1883, P. L. 100.

The judicial construction of these acts is meagre, owing to their recent date, and as some of the older acts are repealed, some directly and others by implication, the decisions applicable to them would hardly be safe to rely upon, in construing the later ones.

We have, however, a few cases in reference to the liability of the county to pay costs in convictions for vagrancy.

"The test of the county's liability is, that the convictions must be of offenses 'punishable by imprisonment at hard labor:' *County of Northampton v. West*, 28 Pa. 174. Now,

no conviction is complete until sentence is passed and recorded; and every sentence must express the very punishment which is to be executed on the prisoner, and the warrant of commitment must follow the sentence as recorded. No offense is punishable by hard labor when the sentence is not to hard labor; for no jailer can exceed the punishment defined in the sentence and commitment; this is never intrusted to him. Here there is no sentence to hard labor. The case must be punishable by law, and by the sentence, before the county can be chargeable with the costs.

"This seems to us important, for these persons seem to us to have been committed as vagrants out of charity, because they were poor and houseless strangers and travelers. Surely they cannot be committed as vagrants, and therefore not to hard labor, and therefore not at the costs of the county. If such things be done for charity, let it not be for the profit of the magistrate. The jail is not an almshouse, and jailers are not administrators of the poor funds.

"We have no open door for stealing the people's funds by this means, if we can avoid it. The county is liable only according to the statute law; and there is no implied or constructive contract to pay, except where some statute makes it a duty to pay, and then the constructive promise is merely to satisfy the form of the action of assumpsit: *Lancaster Co. v. Brinthall*, 29 Pa. 38."¹

"Whilst it has been held, in the cases of the County of Lancaster *v. Brinthall*, 29 Pa. 38, and the County of Northampton *v. West*, 28 Ib. 173, that the county may become liable for the fees of officers in convictions and commitments for vagrancy, yet this can only happen when the conditions prescribed by the statute have been complied with. The act of March 31, 1860, reads in this manner: 'And in all cases of conviction for any crime, all costs shall be paid by the party convicted; but, when such party shall have been discharged,

¹ *The County of Cumberland v. Holcomb*, 36 Pa. 349.

according to law, without payment of costs, the costs of prosecution shall be paid by the county.' That vagrancy is a crime has been often ruled; such being the case, we may see, by the statute above recited, that the party convicted is the one who is primarily liable for costs, and it is only after the convict has been lawfully discharged, without payment of such costs, that this duty can be cast upon the county treasury. If, indeed, as is intimated by the learned judge, the commitments in these cases were intended, not for the punishment of the vagrants, but rather for their accommodation, the officers deserved no costs. As was said by Mr. Justice Lowrie, in *Cumberland Co. v. Holcomb*, 36 Pa. 349, 'If such things be done for charity, let it not be for the benefit of the magistrate. The jail is not an almshouse, nor jailers the administrators of poor funds.' " ²

From the foregoing laws relative to tramps and vagrants, we perceive that vagrancy is considered a nuisance, a crime, and that its suppression is under the jurisdiction of our criminal courts, yet it must also be observed that there are many poor, indigent but honest persons who wander from place to place in search for work, who are looked upon as tramps or vagrants, but who, if they can give satisfactory evidence of their necessities, fall within and come under the protection of our poor laws.

² *Gilkysen v. County of Bucks*, 84 Pa. 22.

CHAPTER XXI.

DISPOSITION OF PAUPER'S ESTATE.

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Property of Paupers to be Applied to Their Support.

Act of 1836, Section 33. It shall be lawful for the directors of the poor of any county, and for the overseers of any district, as the case may be, in which any person shall have become chargeable, to sue for and recover any real or personal estate belonging to such person, and to sell or otherwise dispose of the personal property, and to collect and receive the rents and profits of the real estate, and to apply the proceeds, or so much thereof as may be necessary, to defray the expenses incurred, in the support and funeral of such person; and if any balance shall remain, the same shall be paid over to the legal representatives of such person; after his death, upon demand made and security being given to indemnify such directors or overseers from the claims of all other persons.

This section is from the act of March 29, 1819, 7 Sm. 206.

Ejectment—Substitution of Poor Authorities.

"In an action of ejectment brought by John Calhoun, he claimed a life estate in certain premises. After the institution of the suit, Calhoun became a pauper, and was settled and maintained by Jefferson township. Before the trial of the cause, John Calhoun died. His death was suggested on the record, and on motion of his attorneys and argument, the overseers of the poor of Jefferson township were duly substituted as plaintiffs by the court. The plaintiffs below having shown title for Calhoun for part of the premises in question, when the suit was instituted, claimed mesne profits and obtained a verdict. The only question presented to this court was, whether the overseers of the poor had a right to substitution, and could maintain the action. It is contended by the counsel for the plaintiff in error that the overseers of the poor had no right of substitution; it belonged to the heirs-at-law, Calhoun having died intestate. But the answer to the argument is, that the act of April 18, 1807, Dunlop, 254, 2d ed., provides 'that no writ of ejectment shall abate by the reason of the death of any plaintiff or defendant, but the person or persons next in interest may be substituted in the place of the plaintiff or defendant who shall have died pending the writ.' The word 'may' has been ruled to mean 'shall:' 4 Pa. 419. The sixteenth section of the act of March 9, 1771, Dunlop, 98, 2d ed., 1 Smith's Laws, 313, creates overseers of the poor a body politic and corporate in law, and as such may sue and be sued in that name: *Overseers v. Kline*, 9 Pa. 218. The thirty-third section of the consolidated poor law of 1836 authorizes overseers of the poor to sue for and recover any real or personal estate belonging to any pauper in their charge, and to collect and recover the rents and profits of his real estate, to apply the proceeds to defray the expenses incurred in the support and funeral of such persons; and they are required, in case any balance shall remain after satisfying these objects, to pay it over to his legal representatives after his death, or demand made or indemnity given.

"The counsel of the plaintiff in error admits the right of the overseers to sue and collect the rents of the pauper's estate in his lifetime, but denies their authority after his death; that it may prejudice the heirs, and that the heirs-at-law ought to have been substituted. (Here the contest was with the husband of one heir.) We do not think so. The act of 1807, before referred to, does not confine the substitution to the heirs-at-law; they are only the persons to be substituted when they are next in interest, which only occasionally happens. The evidence shows to a demonstration that in this case the overseers of the poor of Jefferson township, who had fed and clothed the pauper, were the next in interest. Should they recover a surplus, the act of 1836 provides for the contingency; after the pauper's expenses are settled and allowed, the overseers of the township must pay over any balance to the person or persons legally entitled to receive it. It seems to us that human ingenuity could not have devised a truer or better system to meet this particular case than the legislature have afforded." ¹

Poor Authorities May Claim a Pauper's Estate in Orphans' Court.

The question was, whether under Section 33 of the act of 1836 a poor district which has supported a poor person, can maintain a claim in the orphans' court for reimbursement out of choses in action falling due after his death, and collected by his administrator.

In the court below (Juniata county), Barnett, P. J., in his opinion, *inter alia*, says: "But the case of *Jester v. Overseers*, 11 Pa. 540, is not without importance, because it decides that the overseers, who had fed and clothed the pauper and not his heirs, were next in interest to the pauper.

"The said act of 1836 makes it lawful for the overseers 'to sue for and recover any real or personal estate belonging

¹ *Daniel Jester v. The Overseers of the Poor of Jefferson Township*, 11 Pa. 540.

to such' pauper. The policy of insurance was a chose in action and personal estate belonging to the pauper. The fact that no recovery could be had on it until after his death did not change its character. A promissory note may not mature until after the payee's death; indeed, it may not be payable until a certain time after his death: *Colehan v. Cook*, Willes, 393; s. c. 2 Stra. 1217; *De Wald's Est.*, 13 Phila. 251. But it is none the less, for that reason, personal estate of the payee. The statute intends that the overseers shall be reimbursed their expenses, in the pauper's behalf, from the pauper's estate, and should receive a construction consistent with that intention. . . . The overseers are next in interest to the pauper: *Jester v. Overseers*, supra. Their rightful claim exceeds the whole amount of the estate; there is no balance remaining to be paid over; and therefore not payable to the heirs. . . . The claim of the overseers does not appear to be included in any of the actions mentioned in the statute of limitations, and it is based upon the said act of 1836; but we think it unnecessary to decide whether the bar of the statute would apply to any part of their claim, because it does not appear that such objection was raised. The court, thereupon restated the account allowing the oversers the net balance of \$591.28." ²

An appeal was taken to the supreme court, but this question was not decided.

No Liability of a Pauper for Past Support, Upon Acquisition of Property.

"From March 23, 1884, to April 18, 1886, Catharine Reynolds was a pauper legally settled and a charge upon Lathrop township, Susquehanna county. During the period she was maintained by the township at an expense of \$262.28. This action was brought to recover the sum expended. Catharine Reynolds was a lunatic, and L. G. Stevens was

² *Mumma's Appeal*, 127 Pa. 474.

appointed her committee August 18, 1886. The committee received \$2,000 pension arrears and \$8 per month. From the pension thus received he has maintained the lunatic since August 18, 1886, and now maintains her. She has not been, since August 18, 1886, a charge upon the township. Upon these facts, has the township a right of action against the committee in lunacy for moneys expended as above stated? This suit is founded upon the assumption that to the extent of the relief afforded her, she is indebted to the township. When such a person ceases to be a charge upon the district, and is self-supporting and has property derived from his or her labor, or from any other source, he or she is not the debtor of the district for previous maintenance and liable to a suit for it. It is not the policy of our poor laws to create the relation of debtor and creditor between the pauper and district, and a person who was once a pauper, but is now possessed of a competence, is no more the debtor of the district than the one who remains a pauper. If paupers left our almshouses encumbered with debt for their support while there, they would have little inducement to labor and gain an independence. A laboring man is stricken down with disease and supported for a time by the poor district in which he is legally settled. He recovers and goes out into the world to struggle for subsistence. He is entitled to the fruits of his labor and is under no legal obligation to turn them over to the district which, in discharge of its duty, relieved his necessities. If no debt existed or was created when he received the relief, no debt could arise afterwards, in consequence of a change in his circumstances. While the precise question presented here is not passed upon in any Pennsylvania case, there are several Massachusetts cases on the subject, which decide that no action will lie in a case like the one before us: 12 Mass. 328; 5 Allen, 517.”³

Judgment for defendant.

³ *Lathrop Township Overseers v. Stevens, Committee*, 7 Pa. C. C. R. 143.

Pension Money—Persons Acquitted on the Ground of Insanity.

"Pension money paid to a pensioner, or to his committee, where he is a lunatic, and where such money can no longer be recalled by the pension department, or its disposal be qualified or in any manner limited or abridged, it being no longer within the grasp of the government or its officer, inures wholly to his benefit, under Section 474 of the U. S. Revised Statutes, and is subject to his disposal and is liable to the payment of his debts, and in case of lunacy may, with the sanction of the court, be applied to the payment of his debts and subsistence. The property exempt under the statute is money due or to become due.

"The directors of the poor are entitled to be reimbursed out of the after-acquired estate of an insane criminal for his past maintenance in custody, under the act of March 31, 1860, Sections 66 and 70, and the supplement of April 8, 1861, Section 4. And while the appropriate remedy would seem to be an application for an order, the court will give judgment on a case-stated against the committee for the amount expended for the maintenance of the lunatic within the last six years, the committee having pleaded the statute of limitations.

"It seems that a person who ceases to be a charge upon a poor district, by reason of after-acquired property, is liable for previous maintenance under the act of 1836, Section 33."

This was a case-stated in the C. P., Lancaster Co., 1890, and we must refer the student to the original report for the facts. The case was heard before Livingston, P. J., who delivered a very lengthy opinion. A large portion thereof is in reference to the exemption of pension money for payment of the pensioner's debts under the U. S. Revised Statutes, which is foreign to the subject of this work. We cite, however, that portion which dissents from the ruling of the court in *Lathrop Township Overseers v. Stevens, Committee*, 7 Pa. C. C. R. 143. "The learned judge there held that a person who ceased to be a charge upon a poor district, and who is self-supporting and his property derived from his own

labor, or from any other source, is not the debtor of the poor district for previous maintenance or liable for suit therefor; saying that, while the precise question presented here is not passed upon in any Pennsylvania case, there are several Massachusetts cases on the subject which decide that no action will lie in a case like the one before us (12 Mass. 328 and 3 Allen, 517), which, as we have seen, were decided after the repeal of the Massachusetts act of 1817, authorizing an action of assumpsit for money paid, laid out and expended for his use against such person, his executors and administrators, and at a time when there was in that state no statute authorizing such action or making the pauper or his estate liable for such claims. And this decision does not appear to be in accord with the decisions of the supreme court of Pennsylvania: *Lower Augusta Township v. Northumberland Co.*, 37 Pa. 143; *Jester v. Overseers*, 11 Pa. 540, etc.

"The law of this state undoubtedly is that such claim may be properly made by directors of the poor for maintenance of a pauper. But Alexander Craig is not the pauper, and never was received by the directors or admitted to the almshouse as a pauper. He was tried in the court of quarter sessions of Lancaster county—a criminal court—on an indictment for felonious assault and battery, and, as the record shows, actuated by reason of his being insane at the time of the commission of the crime, and, therefore, without inquiry as to his wealth or poverty, the court was required, under the law, to place him under restraint, or in confinement, during the continuance of his insanity. In such case, Section 66 of the act of 1860, P. L. 445, 446, title, 'General Provisions,' declares that 'the court before whom the trial is had shall have power to order him to be kept in strict custody, in such place and in such manner as to the court shall seem fit, at the expense of the county in which the trial is had, so long as such person shall continue to be of unsound mind.' It was not necessary that the court should commit him to the insane hospital of this county; he might have been confined in any place the

court might select, and the county would be obliged to pay the expense of his sustenance and all costs attending his removal to the place of confinement. But if he has any estate, Section 70, P. L. 1860, 446 (see also Section 62 of act of 1836, P. L. 1835, 1836, 604, 605), declares that 'the estate and effects of every such lunatic shall, in all cases, be liable to the county for the reimbursement of all costs and expenses paid by such county in pursuance of such order.'

"Section 10 of the act of 1845, P. L. 442, declares that 'the courts of this commonwealth shall have power to commit to said asylum (the Pennsylvania State Lunatic Hospital and Union Asylum for the Insane), any person who, having been charged with an offense punishable by imprisonment or death, who shall have been found to have been insane, in the manner provided by law, at the time the offense was committed, and who still continues insane; and the expenses of said persons, if in indigent circumstances, shall be paid by the county to which he or she may belong.'

"And, under Section 4, P. L. 1861, page 249, of the supplement to the acts relating to the Pennsylvania State Lunatic Hospital (see also P. L. 1874, page 162, Section 5), it is provided that, in such cases, the overseers of the poor shall have remedy over against the property of the pauper, or against any relative required by law to maintain him or her, to the extent of their liability under the law.

"These several acts, although they do not wholly harmonize in all their provisions, all show that such insane criminal, or his estate, should be liable for his maintenance during his confinement. And this is shown to be the law by the decision of our courts in regard to lunatics. In *Lower Augusta Township v. Northumberland Co.*, 37 Pa. 143, Hannah Savidge, of Lower Augusta, in the county of Northumberland, was indicted for attempting to set fire to a saw-mill. She was found to be insane, and the court directed that she should be committed to the State Lunatic Hospital and Union Asylum for the Insane, at the expense of the county

of Northumberland, and the supreme court say, under the act of 1845, when a lunatic is committed to the State Lunatic Hospital, the county is primarily liable to the hospital for the expense of maintenance, which the proper poor district must refund, the district to be reimbursed by the estate or relatives of the lunatic. See also 47 Pa. 509; 66 Pa. 18. We are, therefore, of opinion that the estate of Alexander Craig, in the hands of his committee, is liable for his maintenance, and liable to reimburse the directors for so much of their claim as the laws entitle them to recover; the statute of limitation being claimed against them. Under the poor laws we have seen the directors could sue for and recover any real and personal estate of the pauper, and receive the rents and profits of the real estate, etc., really making them a committee or sequestrator. No so with lunatics acquitted of criminal charges on the ground of insanity and committed by the court, as Craig was. In such case, they have no such powers; and, while we think the better mode of proceeding to procure reimbursement would be by application for an order, it is intimated by the courts that an action of assumpsit would lie. The claim made is shown to be for money paid, laid out and expended for the maintenance and support of said lunatic, and the benefit of the statute being claimed by the committee, it must, in our judgment, be permitted to prevail, and, therefore, plaintiffs are not entitled to recover any portion of their claim except so much as accrued within six years prior to the entry of the case-stated, which the parties agree amounts to \$615. Judgment accordingly." ⁴

Claim of Overseers Upon a Legacy to Pauper.

"This proceeding was under the act of February 24, 1834, to recover a legacy charged upon land. There is no question the legacy is expressly charged by the will upon the farm described in the petition. Testator by his will provided that,

⁴ Lancaster County Poor Directors *v.* Hartman, 9 Pa. C. C. R. 177.

at the death of his widow, who has been deceased many years, his farm shall be sold, and the sum of \$333.33 of the purchase money be secured on the farm at six per cent. per annum for the benefit of his son, Edward. He also appointed two of his sons 'testamentary guardians' of his said son, Edward, and directed that the interest of said sum shall be for the use as follows: 'The testamentary guardians,' or, accurately speaking, 'trustees, shall yearly and every year after the decease of my widow, and during Edward's life, lay out and buy for him clothing, as he is in need of them, the full amount of the aforesaid interest; but, in case he should become sick and want assistance, then a part or the whole may be applied for his comfort. Now, it is my will that the above-mentioned interest, shall be applied for buying clothing; or, if he should become sick, it may be applied for that purpose, and for no other use or purpose whatever;' and testator further bequeathed said sum of \$333.33 to his grandson, to be paid to him on the death of his father, if he has arrived at the age of twenty-one years; if not, when he arrives at that age. Testator's son, Edward, died August, 1888, and his grandson has long since reached lawful age. He is consequently entitled to his legacy, unless a valid reason be shown to the contrary. And this is attempted by the surviving executor, who alleges that the son of testator, for several years prior to his decease, from dissolute habits became a charge upon the overseers of the poor for the township of Byberry, and so remained until the time of his decease. The grandson neglected and refused to contribute to the support of his father, or pay to the said overseers any part of the expenses incurred by them for that purpose. And that said overseers of the poor expended for the support of the son of testator and other necessary expenses on his behalf more than the principal of said legacy, and have demanded from the executor, as trustee of the said son of testator, that they be remunerated out of said legacy, and have notified him not to pay said legacy, and claim to hold him liable as trustee for

the amount due them, but no sufficient reason is thus alleged for the non-payment of the legacy to the party now entitled, the grandson of testator. The cestui que trust for life was only entitled to the annual income for life, to be expended for his clothing and other necessities in case of sickness. No part of the principal could be used even for those purposes. And upon his death the principal became payable to his son. If he become a charge upon the overseers of the poor, they had no claim to be reimbursed the expense of his support out of the legacy, for the reason he was but a legatee for life of the income. If he had a separate estate, then the remedy of the overseers is provided by the act of 1836, whereby they are authorized to sue for and recover the same, whether real or personal, sell the personal property, collect the rents of real estate, and apply the proceeds, or so much thereof as may be necessary for the support of such poor person and his funeral; any balance remaining to be paid to the personal representatives, upon security being given to indemnify the overseers against the claims of all other persons. See *Jester v. Overseers*, 11 Pa. 540; *Mumma's Ap.*, 127 *Ib.* 474.

"And by the act of April 4, 1877, directors and overseers of the poor are further authorized to lease the real estate of any poor person, receive the rents and apply the same for the purposes mentioned in the act of 1836. Again, as already intimated, the will itself disposes of any claim made by the overseers against the legacy. And they certainly have no right to object to the payment of the legacy because of their claim to recover against the legatee the expense of the support of his father during his lifetime, and, upon his death, of his interment. They have neither judgment against the legatee, nor attachment of the legacy in the hands of either, the executor or the present vendee of the farm, which alone would give them a standing in the court. If they had any claim against the legatee, it was in the lifetime of his father, and again the remedy is provided by the act of 1836. But the remedy does not appear ever to have been invoked.

"For the reasons mentioned the petitioner is entitled to his legacy, with interest from the death of his father." ⁵

See also following acts authorizing directors and overseers to lease real estate of paupers, and recover their choses in action.

Act April 4, 1877, P. L. 51.

A supplement to an act, entitled "An Act relating to the support and employment of the poor," approved June 13, A. D. 1836.

Real Estate of Paupers Applied to Their Support. P. & L. Dig. 3528, § 87.

Section 1. Be it enacted, etc., That it shall be lawful for the directors of the poor of any county, and for the overseers of any district, as the case may be, to make leases for a term of years of the real estate of any pauper, and receive the rents, issues and profits thereof, and apply the proceeds, or so much thereof as may be necessary, to defray the expenses incurred in the support and funeral of such pauper, and the balance or residue thereof shall be paid to the legal representatives of such pauper after his or her death, upon indemnity being made to such directors or overseers to secure them from the claims of all other persons; and after the payment of the claims of such directors or overseers, the rents, issues and profits arising under such lease shall be payable to the legal representative of such pauper.

Leases Heretofore Made, Valid. P. & L. Dig. § 88.

Section 2. That all such leases heretofore made by any directors or overseers, for a term not exceeding twenty years from the date thereof, when possession has been taken thereunder, shall be good and valid, as though made subsequent to and under this act, and the proceeds thereof shall be payable as provided in the preceding section; and if the said real estate leased shall escheat to the commonwealth, the same shall remain subject to the lease during its continuance.

⁵ Worthington's Estate, 9 Pa. C. C. R. 188; 27 W. N. C. 255.

Act May 13, 1889, P. L. 201.

An Act to authorize the directors of the poor of the several counties, and the overseers of the poor of the several poor districts of the commonwealth of Pennsylvania, to sue for and recover any and all choses in action belonging to any person who is now or may hereafter become chargeable to their respective counties or poor districts.

May Sue for and Recover Sums Due Paupers. P. & L. Dig. 3528, § 89.

Section 1. Be it enacted, etc., That whenever any person shall have become legally chargeable, as a poor person, to any county or poor district of this commonwealth, it shall be lawful for the directors of the poor of such county, or the overseers of the poor of such poor district, to sue for and recover any and all sums of money which may be due to such poor person in the present, or to become due in the future, whether the same be claimed by such poor person upon an express or implied contract, by judgment, mortgage, order or decree of any court having jurisdiction of the subject-matter; and for this purpose the said directors or overseers of the poor are authorized to employ any and all legal means which such poor person might have employed, had he or she not become chargeable as aforesaid.

Proceedings for Collection. P. & L. Dig. 3529, § 90.

Section 2. In all suits brought under section one of this act the writ or process shall issue in the name of the owner of the chose in action, for the use of the directors or overseers of the poor of the proper county or district, and at the hearing, proof that the owner of the right of action has become legally chargeable to the county or district whose directors or overseers of the poor are the use-plaintiffs, shall be conclusive of their right to recover whatever may be legally due or to become due to the poor person, so found to be chargeable. If the amount due shall have been already ascertained and judgment entered, the proof that the said plaintiff has become chargeable as aforesaid shall be conclusive of the right of the proper directors or overseers of the poor to be subrogated

as plaintiffs in said judgment, or if the sum due such poor person shall be founded on an order or decree of a court of competent jurisdiction, then proof before such court on a rule to show cause that such poor person has become chargeable to any county or poor district, shall be conclusive of the right of the directors or overseers of the poor of such county or poor district to recover the same, whether the same be due in the present or in the future, or be in one or several instalments; and the said court shall make all the orders necessary to carry the provisions of this section into effect. Any defendant upon whom notice has been served of intention to begin proceedings under the provisions of this act, to recover the amount owing by him to a person chargeable to any county or poor district, who shall after this notice pay the same or any portion thereof to any other person than the proper directors or overseers of the poor, shall not thereby be released from any liability, but shall be liable to pay his entire indebtedness to the said directors or overseers of the poor.

Unexpended Money Refunded. P. & L. Dig. 3530, § 91.

Section 3. Should any person chargeable to any county or poor district in this commonwealth, become self-sustaining or cease to be chargeable, by being supported by a relative or other person, then any moneys originally belonging to such poor person, which may have been recovered under the provisions of this act by the directors or overseers of the poor of such county or poor district, and not expended in the care and support of such poor person, shall belong to such poor person, the same as if no proceedings under this act had been instituted; and on the death of any person chargeable to any county or poor district, any moneys originally belonging to such poor person, which may have been recovered under the provisions of this act and not expended in the care, support or funeral of such poor person, shall belong to the heirs of such poor person, the same as if it never had been obtained by the directors or overseers of the poor under the provisions of this act: Provided, That if the entire amount expended in the care, support and funeral of such poor person shall exceed the amount recovered under the provisions of this act, nothing shall be refunded to the said poor person or his heirs in any event.

After-acquired Property of Pauper Liable for Past Support, Etc.

"Is after-acquired property liable for the previous maintenance? Numerous authorities may be cited to show that at common law supplies furnished to a pauper are gratuities for the payment of which no promise is implied.

"It is true where one voluntarily furnished food to another the contractual relationship of debtor and creditor does not arise. Whether the principle should have any application where the supplies must be furnished upon the demand of the pauper is not so clear. Why should the recipient of the supplies under such circumstances escape payment when in funds? If he is compelled to pay, he simply does that which in good morals he ought to do voluntarily. His payment enables the county to enlarge its liberality in other needy cases. It is said that such repayment is in conflict with the policy of our poor laws and our ideas of charity. But it seems to us there is something radically wrong in the theory that a patient may leave an institution, with a large estate of his own in his pocket, without any legal obligation resting upon him to pay for the food he consumed. Such treatment of the patient is not calculated to stimulate his honesty or improve his citizenship. Nor does the demand for reimbursement under such circumstances detract from the charity. If the pauper receives the maintenance upon the condition that he shall pay when able, it answers his needs just as much as if there were no obligation to pay under any condition.

"Whether there is any obligation to pay without a statute creating the liability is immaterial, for our act of 1836, by Section 33, fixes the obligation to pay. If this act does not cover the case before us, it is difficult to see the purpose of the enactment. . . . The act declares that the directors of the poor may take the estate to defray the expenses incurred; they are not limited to the expenses which may be incurred in the future, nor is there anything in the act limiting them to the property which the pauper had at the time the expenses were incurred. . . .

"The act of 1836, so far as it provides for the reimbursement of the poor directors, is a remedial statute, and should therefore receive a liberal construction. We are satisfied that under it the plaintiffs are entitled to recover from the committee for the support furnished at the almshouse.

"The act of April 8, 1861, P. L. 249, gives the directors of the poor the right to recover the moneys expended at the insane hospital. The estate of the pauper is liable to the extent of its liability under the poor laws: *Lower Augusta Township v. Northumberland Co.*, 37 Pa. 143; *Wertz v. Blair*, 66 Pa. 18. The statute of limitations can, however, be pleaded as in other cases." ⁶

This case is in direct conflict with *Lathrop Township Overseers v. Stevens*, 7 Pa. C. C. R. 143. It was, however, upon appeal affirmed by the supreme court in the following opinion:

"Edward Malone was an inmate of the almshouse of Montgomery county, from May, 1877, until June, 1888, when he became insane and was removed to the hospital for the insane at Norristown, where he is still confined. In June, 1891, he became entitled, under the will of a relative, to a legacy of \$3,100. This action was by the directors of the poor of the county against the committee of his estate, to recover the amount expended for his board and maintenance while in the almshouse and subsequently while an inmate of the asylum up to June, 1891, since which time he has been maintained out of his estate.

"On behalf of the defendant it was contended that supplies furnished to a pauper are gratuities, for the payment of which no promise is implied and numerous authorities were cited in support of it."

Judgment was entered in the common pleas for plaintiff.

Mr. Justice Fell, in his opinion, says:

⁶ *Directors v. Nyce, Committee*, 13 Pa. C. C. R. 594. *C. P. Mont. Co., Swartz, P. J.*, 1893.

"It may be contended for the purposes of this inquiry that supplies furnished a pauper are gratuities, and that an action for the price could not be maintained on an implied promise, or unless an obligation is created by statute. The right to recover in this case was based upon the thirty-third section of the act of June 13, 1836.

"The evident purpose of this act was to give a right which did not before exist, and a fair construction of it in view of the old law and the remedy would seem to sustain the judgment. It works a change in the relation of the pauper to the community, and imposes an obligation to pay for the maintenance received. The case has been so thoroughly considered in the clear and able opinion of the learned judge of the common pleas that further discussion is unnecessary." ⁷

Liability of Township for Maintenance of Convicts in Reform Schools.

"The act of April 17, 1869, P. L. 1118, makes the poor district within which a convict child had its last legal settlement liable to the county in debt or assumpsit for the amount paid by the county for the maintenance of such child.

"In the absence of a statute there can be no liability in a township to pay to the county the expense of maintaining a felon, but the broad language of the act 'in all cases' does not distinguish between crimes of different grades.

"Orvil Moore was convicted of a felony, was sentenced by the quarter sessions of Lawrence county, and was under that sentence received and maintained by the managers of the reform school, and the plaintiff paid for the maintenance. Plaintiff's liability to pay, therefore, was established by this nineteenth section and attached on receipt of the convict. The act of April 17, 1869, P. L. 1118, makes the poor district within which the child (convict) has its last legal settlement

⁷ *Montgomery County Directors v. Nyce, Committee of Malone*, 161 Pa. 82.

liable to the county in debt or assumpsit for the amount paid by the county for the maintenance of said child. This act is special to Lawrence county, and applies to 'all cases where any child shall be committed to said house of refuge from the county of Lawrence.' This act comes within the rule in Allegheny county (*Harris's Case*, 77 Pa. 77), and is constitutional. I am not aware that it has ever received construction by the courts, but it is in its provisions similar to Section 17, act of April 22, 1863, which has been construed many times: *Clearfield Co. v. Cameron Township Poor District*, 135 Pa. 86; *Lower Augusta Township v. Northumberland Co.*, 37 Pa. 143. The right of the county to recover from the poor district and the liability of the district are established. In the absence of the statute there can be no liability on defendant to pay to the county the expense of maintaining a felon, but the broad language, 'in all cases,' does not distinguish between crimes of different grades. The liability does not depend on the fact that the person sentenced and committed was convicted of a misdemeanor or a felony, but on the fact that he was committed." ⁸

The foregoing case was decided under an act entitled "An act relative to the expense of maintaining children committed to the house of refuge of Western Pennsylvania, from the county of Lawrence," passed April 17, 1869, P. L. 1118. The nineteenth section of the act incorporating "The house of refuge of Western Pennsylvania," passed April 22, 1850, P. L. 538, provides that the children received by the said managers under the conviction of any court within the said western district, shall be clothed, maintained and instructed by the said managers at the public expense of the proper county from which they came; and the accounts of said children shall be kept by the said managers in the same manner that the accounts of convicts in the penitentiaries are now directed to be kept by the inspectors thereof.

⁸ *Lawrence County Overseers v. Big Beaver Township Overseers*, 12 Pa. C. C. R. 414.

CHAPTER XXII.

DUTIES AND LIABILITIES OF VARIOUS OFFICIALS.

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Poor Directors Must Make Annual Statements. P. & L. Dig. 3525, § 79.

Act of 1836, Section 34. It shall be the duty of the directors of the poor of the several counties in which poor houses are or may be erected, once in every year, after the accounts shall have been audited and settled, to make out a full and correct statement of their receipts and expenditures for the preceding year, together with the number of the poor persons supported, specifying their sex, age or infirmity, if any, and of the profits arising from all farms under their directions; and it shall be the duty of such directors, annually, in the month of March, to publish such account and statement, at least twice, in two or more newspapers printed in such county, the expense of which shall be paid out of the county treasury, and forthwith transmit a copy of such accounts and statement to the governor, to be by him transmitted to the legislature: Provided, That the account of the guardians for the

relief and employment of the poor of the city of Philadelphia, the district of Southwark, and the townships of Northern Liberties and Penn, shall be audited at the almshouse of said corporation, in the township of Blockley, in Philadelphia county.

This section is from act of January 18, 1821, 7 Sm. 347.

We insert here several acts of assembly in reference to auditing the accounts of the directors and overseers of the poor.

Act April 22, 1879, P. L. 30.

An Act extending the powers and authority of county auditors, authorizing them to settle, audit and adjust the accounts of the directors of the poor of the several counties of the commonwealth.

Section 1. Be it enacted, etc., That in addition to the powers and duties of county auditors, as now conferred on them by law, it shall be their duty to audit, settle and adjust the accounts of the directors of the poor, and of the treasurer and steward of each and every poor house, within any county wherein a poor house has been or may hereafter be erected, in each and every year after the passage of this act.

Section 2. That all laws or parts of laws inconsistent with this are hereby repealed.

Act June 2, 1881, P. L. 44. P. & L. Dig. 1024, § 12.

An Act to amend the first section of an act, entitled "An act extending the powers and authority of county auditors, authorizing them to settle, audit and adjust the accounts of the directors of the poor of the several counties of the commonwealth," approved the twenty-second day of April, Anno Domini one thousand eight hundred and seventy-nine.

Section 1. Be it enacted, etc., That the first section of the act, entitled "An act extending the powers and authority of county auditors, authorizing them to settle, audit and adjust the accounts of the directors of the poor of the several counties of the commonwealth," approved the twenty-second day of April, A. D. one thousand eight hundred and seventy-nine,

which reads as follows: "That in addition to the powers and duties as county auditors as now conferred on them by law, it shall be their duty to audit, settle and adjust the accounts of the directors of the poor, and of the treasurer and steward of each and every poor house, within any county wherein a poor house has been or may hereafter be erected, in each and every year after the passage of this act," be amended so as to read as follows: "That in addition to the powers and duties as county auditors, as now conferred on them by law, it shall be their duty to audit, settle and adjust the accounts of the directors of the poor, and of the treasurer and steward of each and every poor house within any county wherein a poor house has been or may hereafter be erected, in each and every year after the passage of this act: Provided, That this act shall not apply to any poor district, the territory of which is not co-extensive with the county, except upon the petition of at least twenty citizens, resident in such township, filed in the office of the clerk of the court of quarter sessions of the proper county, praying for an audit to be had by the county auditors, as aforesaid, within ten days after an audit had, as required by laws heretofore existing.

See *Nason v. Directors*, as to the two preceding acts.¹

Act June 8, 1881, P. L. 85.

An Act to better provide for the auditing of the accounts of poor districts composed of one or more townships and boroughs of this commonwealth.

Section 1. Be it enacted, etc., That on and after the passage of the same, that whenever poor districts of this commonwealth are not co-extensive with the county in which they are situated, but composed of a part of the cities, boroughs and townships of a county, the accounts of the said poor district shall be audited annually on the second Monday of January, in each and every year, by a board of auditors, composed of the senior auditors of each city, borough and township of which the district may be composed; said auditors shall be entitled to receive one dollar and fifty cents for each and every day actually employed, to be paid from the funds of the district.

¹ 24 W. N. C. 60.

Section 2. That this act shall not interfere with or repeal any special law or acts now in force.

Section 3. That all laws or parts of laws, inconsistent herewith, be and the same are hereby repealed.

Fines, Penalties, etc., for Use of Poor, etc. P. & L. Dig. 3541, § 121.

Act of 1836, Section 35. It shall be the duty of every justice, who shall by virtue of any law of this commonwealth receive any fine, penalty or forfeiture appropriated by law for the use of the poor, forthwith to enter at length on his docket, the name of the person convicted, the offense committed, the amount of such fine, penalty or forfeiture, and the time when the same was paid, and forthwith to deliver a correct transcript of such entry to a constable of the township, and such justice shall, on demand, pay over the same to the overseers of the poor lawfully entitled thereto, and shall annually, if required, exhibit his docket to the inspection of the township auditors.

Magistrates Neglecting Duties. P. & L. Dig. 3541, § 122.

Act of 1836, Section 36. If any justice shall willfully neglect or refuse to perform the duties enjoined on him as aforesaid, touching any fine, penalty or forfeiture appropriated to the use of the poor, he shall, on conviction thereof in the court of quarter sessions of the proper county, be deemed guilty of a misdemeanor in office, and fined for the use of the poor of the township in which he shall reside, any sum not exceeding twenty dollars; and if he shall be convicted of neglecting or refusing to pay over, on demand, to the poor overseers, any money which shall have been received as aforesaid, he shall be fined, over and above the last mentioned sum, any sum not exceeding double the amount which he shall have received as aforesaid, which sums shall be recovered by process of said court.

Overseers Must Demand Fines, etc. P. & L. Dig. 3542, § 123.

Act of 1836, Section 37. It shall be the duty of the overseers of any district to demand from any justice the amount of any fine, penalty or forfeiture that may have been received

by them for the use of the poor, and if the same be not paid to them, within twenty days, to proceed to recover the same by suit against such justice, in the manner that debts of the like amount are or may be by law recoverable.

Sections 35, 36 and 37 are from the act of April 4, 1803, 4 Sm. 97.

Duty of Clerks of Courts, Relative to Fines, etc. P. & L. Dig. 3542, § 124.

Act of 1836, Section 38. It shall be the duty of the clerk of every court by whom any fine shall be imposed, which by law is to be appropriated, in whole or in part, to the use of the poor, forthwith to deliver a written notice of the same to a constable living in or near the township in which the person fined resides; for which service such clerk shall receive the sum of twenty-five cents from the proper overseers, and no more.

Duty of Constables Relative to Fines, etc. P. & L. Dig. 3542, § 125.

Act of 1836, Section 39. It shall be the duty of the constable to whom any transcript or certificate shall be delivered by a justice of the peace or clerk of the court as aforesaid, under a penalty of ten dollars, to be recovered before any justice of the proper county, to deliver such transcript or certificate to one of the overseers of the district to which such fine, penalty or forfeiture belongs; and for such service such constable shall be entitled to receive from such overseers the sum of twenty-five cents, and no more.

Duty of Sheriffs Relative to Fines, etc. P. & L. Dig. 3542, § 126.

Act of 1836, Section 40. It shall be the duty of every sheriff, who shall have received any fine, penalty or forfeiture which by law may be appropriated to the use of the poor, to pay the same, on demand, to the overseers; and if he shall fail to do so, within ten days after demand, he shall, on conviction thereof in the court of quarter sessions of the proper county, be fined and pay to the use of the poor of the proper district, any sum not exceeding double the amount received by him, to be recovered by the process of the said court.

Unexpended Balances to be Paid to Supervisors. P. & L. Dig. 3543, § 127.

Act of 1836, Section 41. In all cases where there are no poor persons supported at the expense of a district, or where there shall remain in the hands of the overseers, at the end of the year, an unexpended balance, arising from fines, penalties or forfeitures received for the use of the poor, it shall be the duty of the overseers to pay all such fines, penalties and forfeitures as may have been received by them, and such unexpended balance, to the supervisors of the highways, to be applied to the repairs of the public roads in such district, unless the township auditors shall judge it necessary that the whole or part thereof should be retained as a fund for the use of the poor.

Section 41 is from the act of February 2, 1804, 4 Sm. 133.

Penalty for Neglect of Duty. P. & L. Dig. 3527, § 82.

Act of 1836, Section 42. If any overseer shall neglect or refuse to perform any duty enjoined upon him by law, and not otherwise provided for, he shall be liable to an indictment for a misdemeanor, and shall be punished by a fine, not exceeding one hundred dollars, at the discretion of the court, to be recovered by the process thereof.

Fines, etc., Levied by Distress. P. & L. Dig. 3543, § 128.

Act of 1836, Section 43. The several fines, forfeitures and penalties, and other sums of money imposed or directed to be paid by this act, and not herein directed to be otherwise recovered, shall be levied and recovered by distress and sale of the goods and chattels of the delinquent or offender, by warrant, under the hand and seal of any magistrate of the city or county where such delinquent or offender dwells, or where such goods and chattels may be found; and after satisfaction made of such fines, forfeitures and penalties, the sum of money, together with the legal charges, on the recovery thereof, the surplus, if any, shall be returned to the owner of such goods and chattels, his executors or administrators.

Appeal. P. & L. Dig. 3549, § 142.

Act of 1836, Section 44. If any person shall be aggrieved by the judgment of any one or more magistrates, in pursu-

ance of this act, he may appeal to the next court of quarter sessions for the county in which such magistrates reside (except in cases hereinbefore specially provided for), whose decision, in all such cases, shall be final and conclusive.

Definition of District. P. & L. Dig. 3533, § 103.

Act of 1836, Section 45. The word "district," in this act shall be construed and taken to mean "township" and "borough," and every other territorial or municipal division, in and for which officers charged with the relief and support of the poor are directed or authorized by law to be chosen, but nothing in this act contained shall be taken to repeal or otherwise interfere with any special provision made by law for any city, county, township, borough or other territorial or municipal division.

Directors of Washington County May Bind Apprentices Without Approbation of Magistrates.

Act of 1836, Section 46. It is hereby declared to be the meaning of the third section of the act, entitled "An act to provide for the erection of a house of employment and support of the poor in the county of Washington," approved the sixth day of April, Anno Domini one thousand eight hundred and thirty, that the directors of said institution have power to bind out as apprentices such poor children as may come under their notice, according to the directions of said act, without the approbation and consent of two or more magistrates.

Repealing Clause.

Act of 1836, Section 47. That all laws hereby altered or supplied, so far as are inconsistent with this act, are hereby repealed.

Mr. Dunlop, in his Laws of Pennsylvania, in a foot-note, says: "How much these kind of repealing clauses leaves of the old law, it is difficult to declare. Judge Stroud has retained in his edition the fifteenth and thirty-third sections of the act of 1771. And I have also retained the sixteenth, twentieth and twenty-first."

CHAPTER XXIII.

OF THE INDIGENT INSANE.

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Of the Indigent Insane.

The following is a short history, by Dr. John Curwen, of the legislation in Pennsylvania for the insane in hospitals specially constructed, which no doubt will be appreciated by those interested in the subject :

In October, 1844, Miss Dix, distinguished for her philanthropic labors in other states, came to Pennsylvania on her mission of mercy and good-will to the insane and the criminal.

She spent several months in examining the condition of the insane in the poor houses in different parts of the commonwealth, and the result of that examination was the presentation to the legislature of a memorial in favor of better provision for the care of the insane.

That memorial presented such a sad and distressing account of the condition of the insane in the poor houses that the legislature decided to make provisions for the insane by the erection of a hospital for their accommodation.

The personal and persuasive appeals of Miss Dix to the members had great influence in inducing them to make the necessary appropriation. It must be remembered that, at that time, the finances of Pennsylvania were in a far worse condition than they have been since; very near to the repudiation of the interest on the debt of the commonwealth.

By the energy, activity and philanthropy of one of the members, afterwards governor and United States Senator, Hon. William Bigler, a bill was passed making a small appropriation for the commencement of a hospital for the insane. The hospital erected by that and subsequent appropriations of the legislature was the Pennsylvania State Lunatic Hospital, at Harrisburg; opened for the reception of patients on October 1, 1851.

Early in the fifties, the managers of the Western Pennsylvania Hospital, at Pittsburg, found it necessary to open their wards for the treatment of the insane; and, in a short time,

they were so crowded that they deemed it proper to arrange for the erection of a separate building.

The corner-stone of the Western Pennsylvania Hospital for the Insane, located at Dixmont, and so-called in honor of Miss Dix, who gave much time and attention to the matter, was laid in 1856, and by successive appropriations by the legislature was ready for the reception of patients in a few years.

The Medical Society of the State of Pennsylvania is entitled to the credit of initiating the movement for the erection of the State Hospital for the Insane, at Danville, in 1868, and the State Hospital for the Insane, at Warren, in 1873. The State Hospital for the Insane, at Norristown, was commenced after the passage of a bill prepared by the board of charities in 1876, a bill initiated by the Medical Society of the State of Pennsylvania having been laid aside, by the committee, to pass that prepared by the board of charities.

A memorial on the care of insane criminals was prepared, on the suggestion of members of this society, but nothing was done, though the bill was introduced to put up on the foundations already laid for the hospital at Danville, rooms for fifty insane criminals. That raised such a bitter opposition that nothing was done.

• A committee of seven was appointed in 1873, by joint resolution of the legislature, to inquire into the condition of insane criminals in the penal institutions of this commonwealth. After careful examination of the different insane criminals, a report was prepared, and, in accordance with the provision of the resolution, a bill was presented making an appropriation for the erection of a building for that class of the insane.

That bill was presented at two successive sessions of the legislature, but on both occasions the chairman of the ways and means committee of the house of representatives never allowed the bill to be discussed by the committee, so that no appropriation could be made.

In 1884, the committee on lunacy decided to transfer all

the insane in the different county poor houses to the hospitals for the insane in the respective districts. In 1889 an act was passed giving authority to the board of charities to transfer back to the poor houses certain classes of the insane in the hospitals. Very few have thus been transferred.

In 1891 the act establishing the asylum for the chronic insane was passed, and the building was located at Wernersville. The object was expressly stated in the following sections of the act:

"Section 7. The commissioners, upon acquiring the necessary land, shall, as soon as temporary quarters can be provided, transfer twenty able-bodied, harmless, chronic insane, from each of the hospitals for the insane, to the premises and farm provided for said asylum, to engage in farm work, grading, macadamizing, excavating for buildings and such other employment as may be required for the reception, care and provision of the subsequent occupants.

"Section 14. Said trustees shall cause to be employed skillful foremen and forewomen to secure the safe and economical employment of the largest number of the asylum, for the purpose of enabling said inmates to contribute to the extent of their ability to the cost of their maintenance."

Such is a succinct statement of the progress of provision for the insane up to this date. Bills for the establishment of a hospital for the insane of the central counties of this commonwealth were presented to the legislature of 1893, 1895 and 1897, but never came out of the committee on appropriations, to which they were referred.

Only in 1897, after the burning of the state capitol, was any explanation given of the unconcern and indifference manifested for the care of the insane.

It will be seen that up to 1891 the uniform policy of the commonwealth was to provide hospitals for all classes of the insane; but the policy initiated before 1891 is now to be supplanted by an entirely different policy, taking the care of the insane from the commonwealth and placing it in the hands

of the directors of the poor of the different counties, who are expected to erect buildings on the grounds attached to the poor houses, for their accommodation.

Act of May 25, 1897, P. L. 83. P. & L. Dig. Sup. 383, § 1.

The act of May 25, 1897, reads as follows:

"That any county, municipality, borough or township of this commonwealth, which now has or may hereafter supply, erect and equip a suitable institution for the maintenance, care and treatment of its indigent insane, upon plans and specifications approved in writing by the board of public charities, shall receive from the state treasury the sum of one dollar and fifty cents per week for every indigent insane person of such county, municipality, borough or township so maintained, who has been legally adjudged to be insane and committed to such institution, or who may be transferred from a state hospital for the insane to such local institution: Provided, That the board of public charities shall be satisfied that the quality and equipment of such institution, and the manner of care and treatment therein furnished, is proper and suitable to the class or classes of the indigent insane so maintained, and shall so certify to the auditor general before any such payment shall be made."

Settlement of Insane Paupers.

Jacob Zerby resided in Beaver township from the year 1824 until the spring of 1841, when he purchased property in Washington township, and removed to it. His son, a lunatic, who was born in 1806, always lived with and formed part of his father's family. The father died in Washington township soon after he removed to it. Jonathan, the son, became chargeable to Washington township after the death of his father; and the question was, to which township he was legally chargeable.

Rogers, J.: "A person may be entitled to a settlement either on the score of birth or acquisition, the manner of acquiring which is pointed out in the ninth section of the act

of 1836. There is also derivative settlement, which is the case of legitimate children following the settlement of the parent, and of the latter description is the case before us. The settlement of a pauper is the place of his birth, but the birth of the child does not give him a settlement, except when the settlement of the father and mother is not known, and then only until it is known. And when the father gains a second settlement, after the birth of the child, the settlement is usually communicated to the child: 2 Lord Raym. 1332. The father's settlement is the settlement of his children when it can be found out; otherwise the birth of a child is *prima facie* the settlement of the child, until another settlement is discovered. In the case before us, it is conceded that the father's settlement is in the township of Beaver; and this is doubtless the settlement of the son, unless after he attained the age of twenty-one years, he became separated from his family. The rule is this: When a son becomes independent of his father's family, or emancipated from it, he will not acquire a settlement where his father goes to reside. But if he remains part of the family, he will acquire a derivative settlement from the settlement of his father: Burr. Set. Cases, 806; *Halefax v. Warley*, 3 Burn's Just. 373. A child is not emancipated so as to lose the benefit of any settlement which his father may gain until twenty-one or marriage, or till he has gained a settlement in his own right, or until he has contracted a relation inconsistent with the idea of being part of his father's family.

"These principles are decisive of the case in hand, as the lunatic has never ceased to need or receive the protection of his father, and from his helpless situation, was incapable of contracting any relation inconsistent with that position." ¹

The same construction must be given to the act of 1836, as has been already given to other similar provisions in the act of 1771.²

¹ *Washington v. Beaver*, 3 W. & S. 548. ² 1 Yeates, 251; 2 Dall. 213.

It has been held that the legal settlement of an idiot from infancy follows that of his father, but as this case turns upon the question, whether the father had acquired a settlement by the payment of taxes, we have cited it more fully under the head of acquiring a settlement by payment of taxes.³

The facts relative to the settlement of the pauper are fully stated in the opinion of the supreme court.

"The learned judge decided the case on the ground that the last legal settlement of the pauper was in Toby township, to which his father removed from Madison a few months before the pauper attained his majority. Because he entered the wrong judgment, we reverse it, and remand the record for further proceeding. We might perhaps correct it by entering the right judgment here, as we have the evidence and the opinion of the court fully before us, but these do not regularly belong to the record for us to act upon. And besides, if we were to pass upon the evidence we could not agree with the learned judge that the pauper's last place of legal settlement was in Toby, by derivation from his father. A fact sworn to by the father of the pauper and other witnesses seems to have escaped the notice of the judge, to wit, that the pauper had not made his father's house his home since a period of several years before the father moved from Madison to Toby. Jackson Platt, the pauper, was born in Madison township, in 1828. His father had a settlement and continued to reside there until April, 1849, when he removed to Toby, but Jackson had separated from his family since about 1845, 'and has not made my house his home since,' said the father. He had wandered about the neighborhood, working sometimes in one township and sometimes in the other, but had apparently gained a settlement for himself in neither.

"Now if this was the state of facts, the order of removal

³ Shippen v. Gaines, 17 Pa. 38.

ought to have been discharged or vacated, for, upon the authority of the cases cited in paper book of the plaintiff in error, as well as according to several cases reported in 3 Burn's Justice, 370, et seq., it is manifest that Jackson derived from his father a settlement in Madison, and being emancipated from his father, gained no settlement through his father in Toby. As was said by Chief Justice Pratt in *Eastwoodhey v. Westwoodhey*, Strange's Rep. 438, 'the question is not where this man was settled, but whether there appears a settlement of him in Eastwoodhey. If he had gone thither with his father as part of his family, possibly it might have been a settlement of him there, but staying behind, he was divided from his father, and therefore there is no color to make it a settlement in Eastwoodhey. I think his settlement is in Westwoodhey, which was the last place where he lived as part of his father's family.' The authorities are concurrent in support of the doctrine that the settlement of a pauper is the place of his birth until he acquires one derivatively from his parents or by act of his own."⁴

"A pauper being an idiot, and the necessity for his relief arose in Jersey Shore; the overseers of the district alleging that Wayne township was the place of his settlement, obtained the order for his removal there. It was conceded that Jersey Shore was not his place of settlement.

"The pauper was the son of William Wagner by Elizabeth Wagner, a second wife.

"There was evidence by the appellant that in 1811 or 1812 William Wagner's settlement was in Dunstable township, then Lycoming county. The appellees gave evidence to show that the father had gained a settlement in Wayne township, and from him the pauper derived his settlement. The court found that the father never had a settlement in either of these townships from which the pauper would derive a settlement. The court found also that the pauper was born

⁴ *Toby v. Madison*, 44 Pa. 60.

in 1824, in Wayne township, where his father and mother then resided, and continued to reside until his father's death; that the pauper was an idiot, and could not by his own act acquire a settlement. The evidence was not clear as to the time when his father died, but probably not long after the pauper's birth. The mother married again, and she and her husband moved to Porter township; the court found that the husband did not gain a settlement there, but that if he had the wife herself gained only a derivative settlement from him which was not communicated to the pauper, he being a child by a former husband; the settlement would remain where it was before the second marriage.

"The appellants submitted a number of points; the third and its answer were:

" 'The fact that Andrew Wagner was born in Wayne township does not give them a settlement there.'

"Answer: 'I do not find as requested in this point. I am of opinion that the settlement of a pauper is the place of his birth until he acquires another derivatively from his parents or by acts of his own. The father's settlement is the settlement of the children when it can be found out, otherwise the birth of a child is *prima facie* the settlement of the child until another settlement is discovered.'

"The court confirmed the order of removal, at the costs of the overseers of the poor of Wayne township.

"The overseers of Wayne township took a writ of error.

"Per curiam: . . . We agree with the court below that the settlement of a pauper is *prima facie* the place of his birth until another can be shown, acquired derivatively or by acts of his own. The birthplace is the statutory rule in the case of illegitimates, and when no other is shown we think it is also the rule in the case of legitimates. In the absence of a derivative settlement from the father, or from the pauper's own acts, it seems to be the only intention left. It has been so understood heretofore in this court: *Washington v. Beaver*, 3 W. & S. 548; *Lewis v. Turbut*, 3 Harris, 145; *Toby*

v. Madison, 8 Wright, 60." Order of the court of quarter sessions affirmed.⁵

"It was contended on the part of the plaintiff in error that the county had no right of action, because the place of settlement of the pauper had not been determined, as required by the statutes for the relief of the poor; and this is the main question presented in the numerous assignments. Calinan was committed to the West Pennsylvania Hospital by the court of quarter sessions of Forest county, and it was certified by said court that he had a legal settlement in Harmony township; but notice of the inquiry, or of the adjudication, was not given to the overseers of the poor of that district.

"The first section of the act of April 22, 1863, P. L. 539, makes it the duty of the court to inquire and ascertain certain facts, and if the insane person be declared in indigent circumstances, to certify to the managers of said hospital the legal settlement of such insane person, if he have any; if he have no legal settlement in this commonwealth, then to certify the place of residence of such insane person, which place shall then be held to be his place of settlement; and the county in which such indigent insane person had his settlement or residence shall be liable to said hospital for the expenses of the care and maintenance and removal, and in case of death, of the funeral expenses of such insane person, with remedy over against the proper poor district. Section 14 of said act declares that a certified copy of the commitment shall be evidence in any suit brought by the hospital to recover the amount due; and no defence shall be taken by any county or poor district in any suit against them to recover the amount of such expenses, on account of any defect or informality in such commitment or record thereof, nor by reason of the failure of the court making such commitment to give the notices or certificate required by the first and eleventh

⁵ *Wayne v. Jersey Shore*, 81* Pa. 266.

section of the act. By Section 12, the county where such insane person had a legal settlement or residence, or from which he was sent, is made liable to said hospital for the expenses incurred in his care, as provided by law, and "in all such cases the county so chargeable shall have remedy over against the proper township, city or poor district where, by existing laws, such township, city or poor district is liable for the support of such insane person, or against any relative required by law to maintain him or her; and the overseers or guardians of the poor of any such township, city or poor district shall also have remedy over against the property of such insane person, or against any relative required by law to support or maintain him or her. When the indigent insane person has no legal settlement in the commonwealth, then his place of residence shall be held to be his place of settlement; and, if the evidence fails to show a settlement, but a residence be proved in a poor district, said district is liable for the expenses, which liability can only be thrown off when such district discovers and adduces proof of his place of legal settlement.

"Remedy is provided for the county against the district, liable by existing laws, for the support of the insane person, in like terms as is given against his relatives who are legally liable for his support. This is by action at law: *Danville Poor District v. Montour*, 75 Pa. 35. The law declares the requisites of a legal settlement, and when mere residence shall be deemed a settlement for the purpose of support, and prescribes the modes of procedure for relief of paupers. The procedure is not the same for the indigent insane, when originally commenced in courts of record, as for others, and ought not to be. Laws relating to the hospitals for the care and custody of these unfortunate persons, provide the remedy for recovering the expenses from their relatives, or the proper poor district. When the county has paid the hospital, neither reason nor anything in the statute which binds the county to pay permits the district, liable for the expenses,

to defend against an action by the county, in any other way than it could have done had it been sued by the hospital. No part of the statute requires the county to wait some procedure before two justices of the peace before bringing suit; nor any additional adjudication by the quarter sessions.

"Previous notice to the authorities of a poor district of an inquiry respecting the settlement or residence of the insane person is not required; but notice is directed to be given to said authorities and to the county commissioners of what has been adjudicated and certified. Here the act differs from that of 1845, which relates to the Pennsylvania State Lunatic Hospital, and provides, 'That the settlement or residence of any such person shall not be so certified until after due notice shall have been given to the constituted authority having charge of the poor in the district to be charged hereby.' Nor does anything in the acts relating to the hospital have similar import as the fourteenth section of the act of 1863. *Danville Poor District v. Montour*, *supra*, was a case to which the act of 1845 applied.

"Although the act of 1863 makes the certificate evidence, when notice was not given, it ought not to be construed as precluding the district defending on the ground that the insane person did not reside therein. The fourteenth section specifies the defences which shall not be made, and the *ex parte* adjudication as to settlement is not declared to be final against the district. For some purposes, the record of the proceedings of the court of quarter sessions in the matter of the lunacy of Michael Calinan was evidence; it was not relied on to prove his settlement in Harmony township. Other proof of that was given which, if not sufficient to show a legal settlement, was to establish residence, but we think it was rightly submitted on the question of settlement.

"We are of opinion that the rulings of the learned judge were within the intendment of the statute relating to the West Pennsylvania Hospital, whether the poor district, after an adjudication and certificate, by the court of quarter ses-

sions, of the settlement or residence of an insane person, if aggrieved, can demand relief in that court, is not a point raised in this case. Judgment affirmed." Justices Mercur and Gordon dissented.⁶

Acquiring Settlement in Another State.

"The district where a pauper has a settlement is liable for his maintenance. But when a person removes to another state and acquires a domicile and settlement there, he loses his settlement in Pennsylvania, and does not regain it by mere residence in his former township.

"A. abandoned his domicile in Pennsylvania in 1869, and settled in Kansas, where he lived several years; afterwards, in 1883, he returned to his native township, and resided there until he was declared insane, and was committed by the court to the state lunatic hospital.

"Held, that he had no settlement in said township, and under the provisions of the act of April 8, 1861, the county and not the township in which he resided was liable for his maintenance.

"Section 4 of the act of 1861 provides that whenever an indigent insane person shall be sent to the state lunatic hospital, the city or county from which he is sent shall be liable to the trustees of the hospital for his maintenance, and shall have remedy over against the proper township, liable by existing laws for the support of such pauper. A chief object of this section was to give the trustees an efficient and ready remedy for recovery of the expenses of maintaining such pauper, and it relieved no district or person, chargeable by their existing laws for the pauper's support, from ultimate liability. The act of 1854, imposing the burden of supporting an insane person who has been committed to the state lunatic hospital, and who has no legal settlement in this com-

⁶ *Overseers of Harmony Township v. County of Forest*, 91 Pa. 404.

monwealth, upon the county where he was found a lunatic, has not been repealed." ⁷

Derivative Settlement—Emancipation.

"The contention of the appellee on the facts (which with the evidence are fully set forth in the opinion of the court) is that Daniel Hoffman, the father, acquired a settlement in Selin's Grove by virtue of his ownership of a freehold estate, situate therein, and dwelling thereon one whole year, and that the settlement thus obtained by him was cast upon the daughter (the pauper), so that her settlement is in Selin's Grove. . . . It seemed to be conceded at the argument that Daniel Hoffman had a conveyance for the Selin's Grove property, and we therefore treat the conveyance as if it carried a freehold, and thereby the father became seized of a freehold estate. Now, our statute provides that a settlement may be gained in any district by any person who shall become seized of any freehold estate within the district, and who shall dwell upon the same one whole year. Notwithstanding this, the appellant insists that the father acquired no settlement in Selin's Grove because his daughter (for whose support he was liable, whilst he was acquiring a settlement by virtue of his residence on his freehold in Selin's Grove) was a pauper in Penn's township, and the township assisted him in maintaining her. In short, it is urged that the father could not have maintained himself and family in Selin's Grove had it not been for the aid furnished him by Penn's township in relieving him in part at least from the burden of supporting the pauper in dispute, and that therefore he is not within the spirit and intention of the statute, so as to enable him to acquire a settlement in Selin's Grove. The law in Massachusetts and other eastern states undoubtedly is, as is said by Mr. Justice Elwell, in *Scranton Poor District v. Directors, etc.*, 106 Pa. 449, that while a man is receiving

⁷ *Juniata County v. Delaware Township*, 15 W. N. C. 465

relief as a pauper he cannot gain a settlement anywhere; and that relief afforded to a member of his family, for whose support he is liable, is, as a rule, aid to him. He cites many authorities in support of this position, which can be there found. However, in the case then before him, he discarded those authorities, and ruled the question upon the plain language of the act of assembly. He there held that a man might gain a new settlement by residence and paying taxes in a new district, notwithstanding the fact that during the same time his wife, whom he had abandoned, was receiving relief as a pauper in the district of his former settlement. His conclusions were sustained by the supreme court in a *per curiam* opinion.

“Nevertheless, he fell into error when he said that a settlement cannot be gained under such circumstances has never been decided by any court in this state. On April 29, 1879, we filed an opinion in the case of the Overseers of the Poor of the Borough of Lewisburg *v.* The Overseers of the Poor of the Borough of Milton, deciding the very question that the learned judge says was never decided in this state. The case was carried to the supreme court. In order to show the principle decided we will be compelled to give a brief statement of the facts. Alpheus Wertz and his two idiotic children were paupers, settled in East Buffalo. The father was able to maintain himself and family exclusive of the two idiotic children. The onus cast upon him by these two idiots was more than he could bear alone. The overseers of East Buffalo entered into an agreement with Wertz, the father, agreeing to pay him a stipend for the support of his children, which he accepted. Whilst this agreement was in full force he removed with his family to Milton, and leased a house there at a rental of \$100 per year, in which he dwelt from about April 1, 1874, until the latter end of March, 1876, and paid upwards of \$77.18 on account of the rent. Whilst he was residing at Milton the overseers renewed the agreement to pay him a stipend for the support of the children aforesaid,

which was paid by them. After Wertz has thus resided in Milton and rented a tenement of the yearly value of \$100, and dwelt therein more than one whole year and paid the rent, he moved to Lewisburg, where he became chargeable. Lewisburg obtained an order and removed him to Milton, and Milton appealed. In the opinion then filed, we, *inter alia*, said: 'It may be urged that the sixteenth section of the law above recited afforded Milton a remedy which, if it had been invoked, would have prevented Wertz from becoming chargeable there: that was to require him to give security in accordance with the terms of the act, and, upon his failure to do so, to have removed him to East Buffalo. We do not see that this neglect can change the status of the parties. This provision of the act requiring security is very harsh, and its enforcement frequently works great injustice to those who have no means, but depend upon the labor of their hands for a livelihood. It may be truthfully said that all men without means, who go into a district and depend upon their manual labor for a living, are likely to become chargeable. If the provisions of the act are to be enforced in all such cases, it would lead to untold suffering and distress among the laboring poor. If the courts held that a pauper, settled in one district, can remove into another and gain a settlement there whilst he is receiving aid from the district whence he came, the provisions of this act of assembly would be enforced with unabated vigor. It would put the overseers of every district upon the alert, and no one coming into a district without means would be permitted to remain without security. The consequences would be so serious that we must shrink from such an interpretation of the act of assembly. We simply hold that a pauper, who is chargeable and receiving aid from one district, cannot acquire a settlement in another so long as this relationship exists. His name must be stricken from the poor books before he can acquire a settlement elsewhere. This opinion was affirmed in the supreme court.

"It is undeniable, then, that our supreme court has decided

that a pauper settled in one district and receiving aid from it is incapable of acquiring a settlement in another district so long as this relationship exists. The existence of this case was certainly unknown to Judge Elwell when he decided *Scranton v. Danville*, 2 Luz. Leg. Reg. 457, and it does not appear from the report of that case that it was brought to the attention of the supreme court on the argument. Had it been produced before the supreme court the result might have been different; but it was not. The principle involved in *Lewisburg v. Milton* has since been followed in *Brady Township v. Clinton Township*, 1 Pa. C. C. R. 127, by Judge Cummin, in which he distinguishes it from *Scranton v. Danville*. We cannot believe that the supreme court intended to overthrow *Milton v. Lewisburg*. If this had been the purpose it would have been an easy matter to say so. Whilst it is difficult to distinguish clearly a difference in the principle which should govern both cases, yet there is a difference in the facts. In the case decided by myself, *Alpheus Wertz* was a pauper himself. In *Scranton v. Danville*, *Jesse Coats* was not a pauper himself, but his wife was and he was permitted to acquire a new settlement and communicate it to her, although she was fastened on the old whilst he was acquiring a new settlement. The reasons for excluding a pauper in one district from acquiring a settlement in another whilst this relationship continues are so satisfactory to our mind that we are constrained to hold that such is the law until the supreme court plainly declares otherwise.

"Then, applying the principle laid down in *Scranton v. Danville*, supra, to the case in hand, we must reach the conclusion that *Charles Hoffman*, the father of the pauper, acquired a settlement in *Selin's Grove* himself, because he was not a pauper himself when he went there to reside on his freehold estate. The contention of the appellee is that this settlement was communicated to the pauper daughter, because she was insane and a part of his family, and had not acquired a settlement elsewhere in her own right, and had not been

emancipated. In support of this appellee relies upon *Overseer of Washington v. Overseer of Beaver*, 3 W. & S. 548; *Shippen v. Gaines*, 17 Pa. 38, and kindred cases. These established that children are not to be considered emancipated at the age of twenty-one years, who are compelled to remain longer with their parents on account of some infirmity of body or mind, which renders them incapable of taking care of themselves. In the case in hand the relationship was disrupted at a time when both the father and daughter had settlement in Penn's township by the father placing her upon that township in the sole charge of the overseers of the poor, who removed her from the control of her father and confined her in the insane asylum at Danville. This was in March, 1883, and she was then upwards of twenty-eight years of age. She remained separated from her father about seven months. Then, with the consent of the overseers of the poor, as established by their written agreement above recited, she was permitted to return to her father's house, not absolutely free from their control, but subject to be returned to the asylum at their pleasure, if they found it cheaper to maintain her there. Notwithstanding this return to her father's house, she still remained a pauper on the township, and the township was bound to maintain her, the only difference being that, with the aid of the father, it cost the township less to maintain her than at the hospital. We find from the evidence, too, that this was the inducing cause that prompted the agreement and brought about her return. It was distinctly decided in *Overseers of the Poor of Washington v. Overseers of the Poor of East Franklin Township*, 3 Pennypacker, 107, that where a female child, living with her father, became insane at the age of eighteen years, and at the age of twenty-three, was discharged as a pauper on the township in which he then lived, his subsequent removal to another township does not affect her status as a pauper, or make her chargeable upon the township to which he removed, and in which he acquired a new settle-

ment. The only difference in the facts of that case and the one in hand is, that there the pauper did not accompany the father to the new district where he acquired the settlement, whilst in our case she did go with him. The decision in that case must rest upon the ground that the separation of father and daughter, by her removal from his house as a pauper, was equivalent to emancipation. We see no other ground upon which it can stand. It is the settled law, both in England and in this country that if the child, although more than twenty-one years old, has not been emancipated or obtained a settlement of its own, that it can acquire a derivative settlement from the father obtained in a new district, although it may never have set foot in the new district. Thus we see the fact that the daughter accompanied the father to Selin's Grove can have no weight in the solution of the question before us. If he had allowed her to remain in Penn's township and had paid her board there, and the overseers of the poor had found the medical attendance for her there as they did in Selin's Grove, her right to a settlement in Selin's Grove derivatively through her father would have been just as complete as if she had accompanied him there. Residence is not necessary to acquire a derivative settlement. The vice in the contention of the appellee is this, the separation of the daughter from the father, she having been adjudged a pauper, was equivalent to emancipation, and she cannot acquire a derivative settlement through him in Selin's Grove. She cannot be regarded as a part of her father's family in Selin's Grove, because she was not dependent upon him alone for support, but the township, too, was bound to maintain her and did assist in so doing. The truth is, she was a pauper whilst with him, and her status was the same as when she was first placed upon the township of Penn's. Whilst she remained a pauper, she was incapable of acquiring a new settlement. The order of the justices is confirmed." ⁸

Judgment affirmed by supreme court.

⁸ Overseers of Penn Township v. Overseers of Selin's Grove, 1 Pa. C. R. 383.

Son Emancipated by Father's Desertion.

"A pauper of unsound mind, but able to do some work, deserted by his father, was thrown upon the township of Gregg after he attained his majority, where he remained a charge. The father in the meantime acquired a settlement in the borough of New Berlin. Held, that the son was emancipated by his father's desertion, and that although the father acquired a new settlement in New Berlin after the son became a charge on Gregg, he was incapable of communicating it to the son, and that therefore the son should remain a charge upon Gregg and not be removed to New Berlin.

"The facts are few and comparatively free from all dispute.

"1. The pauper, Mathias Bird, is about fifty years of age, and is the son of William Bird, now dead. The father had a settlement in Lycoming county in 1857, which he communicated to his pauper son. In that year the father killed a man in Lycoming county, was arrested, tried for the murder and acquitted. The mother of the pauper had died previously to this. After the acquittal the father abandoned his family, including his pauper son, and the latter became a charge on the part of Brady township, Lycoming county, which has since become the township of Gregg, in Union county.

"The township of Gregg maintained the pauper for twenty-six years and upwards, until this controversy began in December, 1884. The father, after deserting the pauper, went West, where he remained until about 1865, when he returned to Union county, Pa., and took up his residence in the borough of New Berlin.

"2. The pauper was of unsound mind from his youth up, and, although a charge on the township of Gregg, was able to maintain himself by the labor of his hands, and did so, the authorities of the township hiring him out to service as a farm laborer. The father, on his return from the West, remained in New Berlin, where he was assessed with his proportion of the public levies or taxes, and paid the same for

two years in succession, to wit: in the years 1876 and 1877. In the year 1873 or 1874 he purchased real estate from Dr. Wilson under articles, paid a portion of the purchase money and dwelt upon the same more than a whole year. He failed to pay the entire purchase money; never received a conveyance for the property, and after his death the heirs of Dr. Wilson assumed ownership and control of the real estate.

"3. The pauper did not become an inmate of his father's house at New Berlin, but remained a charge in Gregg township, from the time his father deserted him in 1857 or 1858 until the order of removal in dispute was issued in 1884 to remove him to New Berlin.

"The contention of Gregg township, under these facts, is that the father acquired a settlement in New Berlin, which he communicated to the son, and that the pauper has, therefore, a settlement in New Berlin. The borough of New Berlin denies this, and thus the question for solution arises.

"We have, then, a pauper of unsound mind, deserted by his father, thrown upon the township after he attained his majority, where he remained a charge until the controversy began. The father, in the meantime, acquired a settlement in New Berlin, which Gregg township insists was communicated to the son, although he had never resided with the father there, and was not dependent upon him for support.

"Overseers of Washington *v.* Overseers of Beaver, 3 W. & S. 548; Shippen *v.* Gaines, 17 Pa. 38, and kindred cases are relied upon to sustain this contention. They decided that children are not to be considered as emancipated at the age of twenty-one years, who are compelled to remain longer with their parents on account of some infirmity of body or mind, which renders them incapable of taking care of themselves. In the case in hand this relationship was disrupted in 1857 or 1858, when the father deserted the son and he became a charge on the township of Gregg.

It was distinctly decided (Overseers of Washington *v.* Overseers of East Franklin, 3 Penny. 107) that where a female

child living with her father became insane at eighteen years, and at the age of twenty-three was charged as a pauper on the township in which she then lived, his subsequent removal to another township did not affect her status as a pauper, nor make her chargeable on the township to which he removed, and in which he acquired a new settlement.

"That case is decisive of the question before us. It does not stand alone, but is sustained by *Overseers of Penn v. Overseers of Selin's Grove*, 1 Pa. C. C. R. 385, decided by myself and affirmed at the last session of the supreme court at Philadelphia: 3 Cent. Rep. 587, 588. We there distinctly held, first, that a pauper fastened upon one district could not acquire a new settlement in another so long as the relationship existed: *Ib.* Second, that the separation of the pauper from her father by reason of her removal from his home by the overseers of the poor was equivalent to an emancipation: *Ib.*

"In support of the first proposition we have *Overseers of Lewisburg v. Milton*, decided by myself and affirmed by the supreme court to No. 202, May Term, 1879; *E. Sudbury v. Waltham*, 13 Mass. 460; *E. Sudbury v. Sudbury*, 12 Pick. 1; *Brewster v. Dennis*, 21 Pick. 233; *W. Newbury v. Bradford*, 3 Met. 428; *Taunton v. Middleborough*, 12 Met. 35; *Oakam v. Sutton*, 3 Met. 192; *Garland v. Dover*, 19 Maine, 441; *Croydon v. Sullivan*, 47 N. H. 179; *Wilmington v. Somerset*, 35 Vt. 232.

"*Washington v. East Franklin* and *Penn v. Selin's Grove*, 1 Pa. C. C. R. 385. The facts in the latter are on all fours with the present one. There the pauper became chargeable on Penn's township and was taken care of by the overseers of the poor and partially maintained by them, and, although she accompanied her father to Selin's Grove as a member of his family, where he acquired a settlement, yet he was powerless to communicate it to her. [So here, although the father acquired a new settlement in New Berlin after the son became a charge on the

township of Gregg, yet he is incapable of communicating it to him, because the status of the son was fixed when he became a charge on Gregg and was equivalent to emancipation, and because his status as a pauper of Gregg disqualified from obtaining a settlement in New Berlin while that relation existed.]

"And now, to wit, September 20, A. D. 1886, appeal sustained, order of removal discharged, and it is ordered that Gregg township pay to the borough of New Berlin the costs and charges incurred on account of the removal and maintenance of the said pauper, together with the costs of the proceedings.

"The plaintiffs took no exceptions to the opinion of the court nor to the answers to the points presented. The assignments of error specified the portion of the opinion enclosed in brackets, answers to the points above set out, and the action of the court in sustaining the appeal.

"Per Curiam.—We have examined this case and find no error in the findings and conclusion of the court. The merits of the case are such that it may readily be affirmed. If it was not so, absence of exceptions might compel us to quash the writ."

Judgment affirmed.⁹

Derivative Settlement from Mother, Deserted by Husband.

"This case involves the legal settlement last held by Weller Keyser, an indigent insane person, who was put under arrest for a supposed criminal offense, and after being lodged in the county jail upon an investigation held under the provisions of the sixth section of the act of April 20, 1869, by three commissioners, one of whom was a physician, one a lawyer, and the third a reputable citizen, was found to be insane, and upon due proceedings had was, on September 25, 1884, committed to the insane asylum at Danville, Pa.

⁹ *Overseers of Gregg Township v. Overseers of New Berlin Borough*, Cent. Rep. Vol. 8, No. 4, p. 527.

"Under the fourth section of the act of 1861, P. L. 249, and the other sections of that act, the county of Clearfield is primarily liable for the support of the said indigent insane person, Weller Keyser, but has a remedy over against the proper district, liable by existing laws for support of such pauper, and if it appear that said Weller Keyser had no legal settlement in this commonwealth, then the burden of supporting him while in the asylum rests upon the county of Clearfield.

"Upon the facts, gathered from the depositions, we are to determine which of the districts now in court upon the rule and the appeal is liable for the maintenance of Weller Keyser during his confinement in the asylum at Danville, and for the costs and expense of his removal thereto.

"It is well settled by authority that the present residence of either of the parents of the said Weller Keyser cannot be considered in determining this question. Both reside out of the commonwealth, and we have no power to send the pauper beyond the limits of the state: *Overseers of Limestone v. Overseers of Chillisquaque*, 87 Pa. 294; *Juniata v. Overseers of Delaware*, 107 Pa. 68.

"We are further of the opinion that the evidence fails to show that Weller Keyser had gained a legal settlement, under our poor laws, in the borough of Dubois, either by payment of public taxes, by taking a lease of real estate, or by hiring or indenture, under the fifth, sixth and seventh paragraphs of the ninth section of the act of June 13, 1836. He had at most a residence there, and under the provisions of the act of 1854, as between the county of Clearfield and the borough of Dubois, the county is liable for his maintenance and support in the asylum.

"But it is contended that the last place of legal settlement is Parker City, for the reason that his mother had gained a settlement there prior to her removal from there, in April, 1882, to Washington, D. C. The answer by Parker City to this contention is that Mrs. Keyser, not being divorced from

her husband, either *a vinculo matrimonii*, nor yet *a mensa et thoro*, she could not gain a legal settlement apart from that of her husband, and as her husband had never resided in Parker City for any time, she could not gain a settlement there so as to make Parker City responsible for her own maintenance, and therefore not for her children's maintenance.

"So far as the learning and industry of counsel have been exerted and our own researches have enabled us to find authorities from our higher court, we have been unable to find any case exactly in point. In the case of the Overseers of Williamsport *v.* Overseers of Eldred, 84 Pa. 429, the case in our judgment, coming nearest to the point, the wife was divorced *a mensa et thoro* from her husband, and therefore it does not determine authoritatively the exact question raised here. In short, can a wife who has separated from her husband because of his intemperate habits and his failure to support her and her children, gain a settlement under the poor laws in a district different from that in which the husband has, or had, his legal settlement? The second section of the act of May 4, 1855, provides 'that whenever any husband, from drunkenness, profligacy, or other cause, shall neglect or refuse to provide for his wife, or shall desert her, she shall have all the rights and privileges secured to a *feme sole* trader, under the act of February 22, 1718,' etc.

"The third section of the same act provides that 'if the husband or father, from drunkenness, profligacy, or other cause, shall neglect or refuse to provide for his child or children, the mother of such children shall have all the rights and be entitled to claim, and be subject to all the duties reciprocally due between a father and his children,' etc.

"Now it is no longer an open question, that under the second section of the act of 1855, the wife is by the very terms of the act itself given the right to acquire property and hold her separate earnings, and that no decree of the court declaring her a *feme sole* trader is required. Under its provisions, then, she may make any contract binding herself and

enuring to her benefit and for the support of her children, that she could do or make if *sole* and had never been under coverture: *Black v. Tricker*, 59 Pa. 13; *Jacobs v. Featherstone*, 6 W. & S. 346; *Cleaver v. Scheetz*, 70 Pa. 496; *Wilson v. Coursin*, 72 Pa. 306; *Winternitz v. Porter*, 86 Pa. 35.

"Here, then, is found her right to do certain acts which ignore the existence of a husband. He is, so far as these matters are concerned, legally dead. The act of June 13, 1836, Section 9, Clause 3, says that a settlement may be gained under our poor laws by any person who shall *bona fide* take a lease of any real estate of the yearly value of \$10, and shall dwell upon the same for one whole year and pay the rent.

"It is not disputed that Mrs. Keyser did this in Parker City. She lived there six years or more, having leased the premises she occupied from her son, John W. Keyser, and paid through her son-in-law and her son, Weller Keyser, \$60 per annum rent for a part of the time, and for the residue of the time \$96 per annum. If she was not under coverture, but was a widow, it would not be contended but that this would make her legal settlement in Parker City. But it is the contention that the mere fact of the existence of a profligate husband, who has not lived with her for fourteen years past, takes away the entire legal effect of her contract of leasing there, and if she was the pauper would deprive her of a legal settlement and the right of support from the district.

"We are not persuaded that such is the law, and think that the requirements of humanity and common sense require us to hold the reverse. If this conclusion is correct, then under the third section of the act of 1855 the benefit of settlement gained by her enured to her children, whom she reared and supported while living in Parker City. It will be observed that the pauper was in his minority when his mother moved to Parker City and for four years after she came there, and there is no evidence to show that he had gained a settlement anywhere else within the state after his mother's removal from the state, and we would conclude that Parker City was

his last place of legal settlement, without more discussion, if another question did not arise under the evidence, and not argued by counsel on either side, but which enters into the proper determination of the cause.

"The evidence indicates that in the spring of 1880 Weller Keyser, the pauper, left home, expressing his determination to go to New Mexico. Whether he did go in fact is wholly conjectural. He was absent, as near as we can gather, about two years, perhaps more; where he was we are left without proof.

"It would be undoubtedly true that if he had gained a settlement out of the state, he would thereafter be in the same legal status as a person who never was in the state, and would therefore have lost the settlement of his mother at Parker City: *Juniata Township v. Overseers of Poor of Delaware Township*, 107 Pa. 74.

"To constitute a domicile two things must concur: First, residence; second, the intention of making the place of residence the home of the party; the domicile of a party is that place in which he has fixed his habitation without any present intention of removing therefrom: 1 *Bouvier Law Dict.* 489; *Story, Conflict of Laws, Section 44*; *Carey's Ap.*, 75 Pa. 205.

"If Weller Keyser, when he left the state, had no present intention of returning, but had the intention of residing in New Mexico, then he lost his domicile and settlement in Pennsylvania, but are we justified in saying that he had such intention, the existence of which is a necessity, in order to change his legal status, either as an elector or as a person entitled to the benefit of our poor laws, without proof thereof? Can we infer it from the mere fact coming out incidentally in the testimony, that he said he was going to New Mexico. His declarations of his purpose in going, evidence of what he was engaged in while there, would be pertinent to show his intention and as determining his domicile and residence there. But we do not think that in a country where the people are given to traveling, as in ours, we ought to accept as

an established fact so important a question, without evidence from which it may be fairly inferred.

"If it be true that he did change his domicile and residence, then Parker City is no longer his place of legal settlement, derivatively, through his mother, and the county would be liable. But we are of the opinion that the evidence on this point would not justify us in finding that he had gained a settlement or domicile out of the state, and consequently the last settlement in the state was that of his mother at Parker City. We, therefore, order and direct the rule to show cause why Dubois borough should not be certified as the last place of legal settlement of Weller Keyser to be discharged. And we do hereby further certify that the last place of legal settlement of Weller Keyser, an indigent insane person, now in confinement in the asylum at Danville, Pa., was in Parker City poor district, Armstrong county, Pa., that said district is liable to the county of Clearfield, Pa., for the costs of removing the said pauper to the asylum, and for his maintenance and support while there."

Upon appeal the supreme court affirmed the judgment in a per curiam, saying: "The conclusions of law found by the learned judge are well supported by reason and authority. The facts found are sustained by the evidence."¹⁰

(The following is a long case, but there are so many interesting points in it, we could not refrain from giving it entire.)

Rescission of Decree Denied—Adultery of Wife.

"Proceedings were commenced in January, 1880, by reason of the petition of one O. D. Ayres being presented, setting forth the fact of the lunacy of Mary A. Ayres, of the second ward, Parker City, in Armstrong county. Thereupon a commission was appointed, consisting of a lawyer, a physician

¹⁰ *Overseers of Parker City v. Overseers of Dubois Borough*, Cent. Rep. Vol. 8, No. 2, p. 207.

and layman; a report of this commission was duly filed, together with the testimony taken by the commission.

"The testimony of O. D. Ayres, then taken, disclosed the fact that he was the husband of Mary A. Ayres, and that they had been married for about ten years.

"Upon the testimony then taken the commission reported that the said Mary A. Ayres, for the past nine years, had been a resident of the second ward, Parker City, Armstrong county; that she was insane, and that neither she nor her husband, O. D. Ayres, had property. Whereupon, on January 22, 1880, the report of said commission was duly approved by the court and the pauper was duly committed to the asylum at Dixmont.

"At the same date a rule was entered upon the overseers of the second ward, Parker, to appear at March Term, 1880, and show cause why said district should not be certified as the place of last legal settlement of said Mary A. Ayres, etc. This rule was afterwards made returnable to June Term, 1880, which rule, it appears from the records, was duly served and an appearance by counsel entered for said second ward, Parker, and subsequently thereto the rule was made absolute and so remained as a decree of court until September 19, 1885, when a petition was filed setting forth the fact that the entry of the decree was erroneous, and asking that said decree might be rescinded, etc. The petition was thereupon allowed to be filed, and the question of striking off was postponed without prejudice till the final taking of testimony, etc.

"Two rules have been granted, one upon the overseers of New Castle, and another upon the overseers of Union township, Lawrence county, to show cause why one of these districts should not be certified as the place of last legal settlement of Mary A. Ayres.

"As the matter stood prior to the appointment of John F. Whitworth as commissioner, the record showed about as follows:

"1. The original decree fixing the second ward, Parker City, as the place of the last legal settlement of the pauper.

"2. A rule filed December 3, 1883, upon said Parker City, to pay the costs of maintenance, etc.

"3. A rule of February 18, 1884, upon the county of Lawrence, to show cause why said county should not be certified as the last legal residence of Mary A. Ayres, and why said county should not pay the costs, etc.

"4. A rule dated September 1, 1884, upon the township of Union, Lawrence county, to show cause why said township of Union should not be certified as the place of last legal residence of said Mary A. Ayres, etc.

"5. Petition of overseers of Parker, filed September 19, 1885, asking a rescission of the original decree.

"The parties interested in this quadrangular contest would then appear to be the county of Armstrong, on which the burden of maintenance was primarily cast; the city of Parker, the place of actual residence at the finding of the fact of lunacy, etc.; the county of Lawrence, and the township of Union, in Lawrence county.

"The question of settlement as to the city of New Castle appears to have been abandoned, so it afterwards was confined to a contest between Union township and Parker City.

"The facts found by the learned commissioner can leave no doubt as to the previous marriage of Mary A. Ayres to one S. E. Furgeson prior to 1861, when her husband entered the army after a residence in New Castle for some time. Upon his return they were unsettled. In the spring of 1865, with their family, they went to Eagle Rock, left there in 1866, and went from place to place. He was with his family at Eagle Rock, in Venango county, about one year. At that time Furgeson abandoned his family, at least left them, in 1866.

"It is charged in the testimony of Furgeson that his wife was living with O. D. Ayres at the time he left her. He also says that he offered to live with her if she would leave Ayres. After leaving his wife Furgeson continued in his vagrant

life, going from place to place until about the year 1875, when he commenced living in Union township, Lawrence county, and as far as any acts of his could affect it, he gained a settlement, as he paid taxes in this township and voted. He seems to be a man of very intemperate habits.

"In the meantime, in 1870, or about that time, Mrs. Ayres came with her children to Parker. As to her marital relation with Furgeson, it was before this time completely dissolved so far as the mere acts of the parties could dissolve it. She had evidently been cohabiting with Ayres before she came to Parker, as they were together on the river in a boat, and he seems to have been associated with her from the time they were at Eagle Rock. She had assumed the name of Mrs. Ayres. The son testifies that she was married to O. D. Ayres in Cleveland. In the petition sworn to on January 16, 1880, O. D. Ayres describes her as Mary A. Ayres, and in the mortgage dated July 11, 1877, subscribed to by both O. D. Ayres and Mary A. Ayres, to which a separate acknowledgment is added, she is described as the wife of O. D. Ayres. In his testimony taken before the commission in lunacy, O. D. Ayres swears that she was his wife, and that they had been married for ten years.

"After coming to Parker (second ward), Mrs. Ayres acquired two building lots in Parker; the ground was rented from the Conly estate, and the buildings belonged to her. She occupied the one as a millinery store, where she carried on the business of milliner from 1871 to 1877. She rented the other. By the mortgage in evidence she appeared to have been joint tenant with her husband in certain real estate; that is, with O. D. Ayres, which appears to have been purchased for the consideration of \$3,000, as the mortgage dated July 11, 1877, is given for the unpaid purchase-money, the balance of which is described as two-thirds remaining unpaid. And the mortgage further describes that a deed of same date had been made for the property to O. D. Ayres and Mary A. Ayres. The son, William Furgeson, says that

after 1877 they lived in the hotel property which they bought, and that he was given to understand that 'Mrs. Ayres owned one-half and Mr. Ayres owned the other half.'

" . . . About 1870 she was in Cleveland, and afterwards went by the name of Mrs. Ayres, and thereafter continued to live and cohabit with O. D. Ayres as if they were man and wife. It is not shown that she was divorced from her first husband, nor is her first marriage much more strongly proven than the fact of a marriage with O. D. Ayres.

"If she were, however, the wife of Furgeson, and not the wife of Ayres, was she not competent, independent of the fact of becoming a *feme sole* trader, of acquiring settlement in her own right?

"Now, if she were not legally married to Ayres, what was her status? Her husband, Furgeson, was a man of extreme intemperate habits, had abandoned her in 1866, and thereafter she was dependent upon her own efforts for her own support and that of her family of three children, Furgeson never afterwards contributing anything.

"In 1870, she came to Parker and took a lease jointly with O. D. Ayres, of ground of the annual value and rental of \$52, on which she lived and carried on the business of a milliner in one house erected on the property so leased, and rented the other. The lease called for quarterly payments of the rent in advance; was the property of minor heirs, whose guardian, Mr. McBride, was a well-known, prompt business man, and being now dead, and the other party, Mrs. Ayres, now insane, consequently the best evidence is inaccessible. Something, even aside from testimony of W. G. Conly, one of the heirs, that he received his proportion of the rent, may be legally presumed in favor of the guardian performing his legal duty of collecting the rent.

"If the lease, then, was to her not as the wife of Ayres, it was to her individually and if Ayres paid the rent, it was a payment for her, and for which he had a right to demand repayment from her.

"If she paid it herself or through Ayres, it was a compliance with the provisions of the act of June 13, 1836. She was an occupant of the building and carried on a business that involved the possession of a certain stock of goods, which could have been the subject of seizure in case of non-payment of rent.

"We think it altogether proper to conclude that she paid at least her share of the rent, if not all, as one of the witnesses speaks of the property as being built by her and belonging to her. During the period of the existence of the lease, whilst she was yet occupying the property—that is, in the year 1875, she was declared a *feme sole* trader, conferring upon her the rights of suing and being sued. If she continued in the Conly house, her contract for rent was a valid one, and her subsequent individual liability unquestionable. There seems little doubt, under all the testimony, that she continued as tenant of the Conly property until 1877; hence, if that were the case, she had her possession as absolutely as any other person, wholly *sui juris*, could have held it. This was all in the course of the duty of maintaining herself and her family, otherwise she must then have become a pauper, unless support, other than her husband, Furgeson, did or could have furnished, had been provided.

" . . . Under all these facts, the first duty is to say whether a decree heretofore made, by which the city of Parker was adjudged the place of legal settlement of Mrs. O. D. Ayres, the pauper in question, should be stricken off and rescinded. The decree, it must be presumed, was deliberately made, the party in interest had notice of the rule, and the presumption is that the consequences of neglect to resist its entry was fully known. Before it should be rescinded, we think the evidence of error in the entry should be entirely satisfactory. It ought not to rest alone upon the showing of settlement acquired by the first husband, Furgeson, subsequent to October 1, 1875, which is the date he went to Union township, and hence his settlement must have been acquired not less than one year thereafter.

"Now, even before becoming a resident of Union township, his wife, if she is to be regarded, had been declared a *feme sole* trader, and as such was entitled to many rights that made her entirely independent of any husband. She was then in a different locality from Furgeson, in a different county, and was maintaining herself and her family, the owner, certainly in part, of a leasehold upon which we have the right to presume that she had paid the taxes, rent, etc. Furgeson was only a mere boarder in Union township, and by virtue of the mere payment of a personal tax, in time doubtless acquired such a settlement in the township as would render the township liable for his support when he would fall a pauper. But the facts seem to establish a far more substantial settlement acquired by the deserted wife with her three children than that acquired by the vagrant husband. Hence we think the evidence is wholly insufficient to satisfy us that we should now rescind the decree.

"But if the decree were to be treated as not having been entered, and the question was now solely a question of settlement, is not the law with the township of Union? The commissioner in pursuance of his appointment has very conscientiously examined the facts and the law, and has furnished us with an able opinion, in which he reaches the conclusion that Mary A. Ayres had acquired a settlement in the second ward of Parker City. In support of this opinion he cites the case of *The Overseers of Williamsport v. The Overseers of Eldred Township*, 84 Pa. 432. The opinion of Agnew, J., covers much of the ground of this case. The case of *Overseers of Montoursville v. Overseers of Fairfield Township*, 112 Pa. 106, suggests the possibility of the husband in that case losing this original settlement and acquiring settlement through the wife, with whom he was not then living, but had not been divorced, being seized of a freehold in another district. But the more recent case on the subject is that of *The Overseers of Parker v. The Overseers of Du Bois*, 8 Cent. R. 207, in which case an exhaustive opinion

is delivered by Krebs, J., in which he reaches the conclusion that a wife merely separated from her husband and supporting herself and her family by her own acts, under the statute, one of which is the leasing of real estate of the value of \$10 per annum, dwelling upon the same for one whole year, and paying the rent, confers the right of settlement. This opinion is sustained by the supreme court, and, it would seem, is conclusive of the present case.

"We have seen that Mrs. Ayres had become a *feme sole* trader before her husband had acquired a settlement in Union township, and that at the time of her removal to the insane asylum she was a resident of Parker. Primarily, that district was liable for her support: Overseers of Harmony v. The County of Forest, 91 Pa. 404. Of course this would not prevent the city of Parker having recourse upon the district of actual settlement.

"But the present case presents another feature, namely, the fact that she, the pauper, was from 1870 the reputed wife of O. D. Ayres, living and cohabiting with him as such, and so acknowledged by him, with evidence of a reputed marriage. The evidence is silent as to any divorce being had from her first reputed husband. The presumption of law would be that the first marriage continued. That, however, is but a presumption, and susceptible of being rebutted. The fact of continued separation, cohabitation with another man, the assumption of his name, manifest acts consistent with such re-marriage, would tend to rebut the first presumption. The place where a divorce could have been obtained was in the county of Venango; where she last lived with her first husband would be the proper county for proceedings in divorce, but she is neither called nor competent to testify, and O. D. Ayres has departed the state.

"If, then, in fact, she was the lawful wife of O. D. Ayres, Parker City was unquestionably the place of her last legal settlement.

"But this fact we do not think essential to be found in this

case, as the other facts sufficiently sustain the original decree. . . . We therefore decline to rescind that decree.”¹¹

Res Adjudicata.

“David Hall was found to be insane in Plumcreek township on October 31, 1882, by a commission in lunacy, under the act of April 20, 1869, Section 6, P. L. 78, and was committed to the Western Pennsylvania Hospital for the Insane at Dixmont, at the costs of Armstrong county, at the same time the court issued a rule upon the overseers of the poor of Plumcreek township to show cause why they should not pay the expenses and costs of this proceeding. The overseers of Plumcreek denied their liability on the ground that David Hall was not legally settled in the township of Plumcreek, and was not a resident in said township. This rule was discharged without prejudice to the county as to further proceedings against the township of the last settlement when ascertained.

“On June 6, 1892, the county commissioners of Armstrong county presented their petition, setting forth that David Hall had been adjudged a lunatic and committed to the asylum, that the said county had expended \$920.44 for his support, and that they were informed and believed that at the time of said commitment the last legal settlement or residence of the said David Hall was in the township of Plumcreek, Armstrong county, and asked for a rule on the overseers of the poor of said township. The court granted the rule. To this the overseers filed an answer denying that the legal residence or settlement of the said lunatic was in the township of Plumcreek, or that the said township was in any manner liable for his support or to reimburse the said county. And further said that on October 31, 1882, a similar rule in the same case was granted on the overseers of Plumcreek township and duly served and an answer filed denying the liability

¹¹ Ayres' Case, 4 Pa. C. C. R. 499.

of said township for the support of said pauper, and that upon testimony taken and argument of said rule, it was thereon decided and determined that the last place of legal settlement of said David Hall was not in Plumcreek township, and the said rule was discharged.

"The court, Rayburn, P. J., discharged the rule.

"The supreme court affirmed this decree, and held, that the discharge of the rule was conclusive in favor of the township against which the rule was directed, and that the county could not proceed again a second time for the purpose of collecting the expense of the support of the lunatic." ¹²

Review by Appellate Court—Settlement of Married Woman.

"An appeal from the order of the court of quarter sessions of Armstrong county, certifying that Marion township, in Butler county, was the last place of legal settlement of Margaret Christy, an indigent lunatic, who is confined in the Western Pennsylvania Hospital. The record shows that this order was made, after hearing upon a rule to show cause, granted upon the application of the overseers of the poor of South Buffalo township, in Armstrong county, and duly served upon the overseers of the poor of Marion township. No question is raised by counsel as to the standing or right of the overseers of South Buffalo to apply for the order, or as to the authority of the court to make it, if in fact and in law the last settlement of the lunatic was in Marion township. The act of April 22, 1863, P. L. 589, authorizes the court of quarter sessions, under certain circumstances, to certify the legal settlement of insane persons committed to the hospital. In the absence of objections upon this score to the regularity of the proceedings, we may assume that the order was made in the exercise of the jurisdiction thus conferred.

"It is very questionable whether an appeal in the sense in which that term was used prior to the act of May 9, 1889,

¹² *Armstrong County v. Plumcreek Township*, 158 Pa. 92.

P. L. 158, lies from such order. The act of March 16, 1868, P. L. 46, which is supposed to authorize and regulate it, applies in terms to proceedings on appeal from orders of removal, and it is only by treating this proceeding as a substitute for an order of removal and an appeal therefrom—which it must be confessed requires a great strain—that the act of 1868 can be made applicable. If there is any other act which confers upon us jurisdiction in such a case, which was not formerly exercisable upon certiorari, it has not been called to our attention.

“Assuming that the case is properly here, and that the exception filed in the court below was intended to include the answers to the several requests for finding of fact and of law, let us look at the specifications of error. The first two relate to findings of fact; but as there was competent evidence, which is believed, was sufficient to sustain them, the conclusion of the learned judge as to the weight of the testimony, especially as the credibility of the witnesses was involved, are not reviewable. Many of the decisions upon the question will be found collected in *Spring Township v. Walker Township*, 1 Pa. Super. Ct. 383, and we need not go over the ground again. The finding complained of in the third specification is partly one of fact and partly one of law. So far as it is the latter, it is but an affirmance of the propositions that a married woman during coverture, and after her husband’s death, is deemed to be settled in the place where he was last settled (act of 1836, Section 10), and that the settlement of a pauper is the place of his birth until he acquires another derivatively from his parents or by acts of his own: *Toby v. Madison*, 44 Pa. 60; *Wayne Township v. Jersey Shore*, 81* Pa. 264. John Christy, the husband of the lunatic, was born in Marion township, and lived there with his parents until after he was twenty-one years old. In 1880 he married Margaret Miller, the lunatic, in Washington township, and in the same year he and his wife moved into Venango township. It is alleged by the appellant that he

acquired a settlement in the latter township by leasing and payment of rent. The appellant's counsel frankly concede that this is the only question in the case. The evidence was conflicting, and after a very careful and painstaking review of it, the learned judge below found that John Christy did not pay rent so as to acquire a legal settlement in Venango township. This would seem to be conclusive of the question, unless finding of fact can be overturned by us, which, as has been seen, cannot be done." Order affirmed and appeal dismissed.¹³

Costs in Lunacy Cases.

"The costs of proceedings in the court of common pleas to declare a pauper a lunatic, must be paid by the county in the first place. The county may subsequently reimburse itself by proper proceedings against any poor district or person legally responsible for the pauper's maintenance.

"Of the ultimate responsibility of the father of the lunatic to pay those expenses, if of sufficient means, there can, we think, be no doubt; but it is equally well settled law, as we think, that in the first instance the county is liable to pay them. This, we think, has been the law since the passage of the act of April 8, 1861, as prescribed by the fourth section of that act. That the son is insane and in indigent circumstances is found by the commission and adjudged by the court in this case. Therefore, when the county shall have paid the charges, it may be reimbursed by proper proceedings against any poor district or persons liable under our poor laws to maintain this young man; 135 Pa. 86; 2 Pearson, 83; 30 Pa. 522; 37 Pa. 143; 47 Pa. 509; Purd. Dig. 1883, 1109, Par. 6, et seq.; P. L. 1889, pp. 127 and 258. See 80 Pa. 65."¹⁴

¹³ In re Lunacy of Margaret Christy, 2 Sup. Ct. 259.

¹⁴ Ketcham's Case, 14 Pa. C. C. R. 9.

Liability for Support of the Insane.

At the time of an action of assumpsit for the maintenance of insane paupers, the court instructed the jury to return a verdict for plaintiff, subject to the question of law reserved whether there was any evidence upon which plaintiff was entitled to recover. The court entered judgment for defendant *non obstante veredicto*, on the ground that no order of relief had been obtained, citing *Poor Directors v. Worthington*, 38 Pa. 160; *Overseers v. Bunn*, 12 S. & R. 292; *South Huntingdon v. West Huntingdon*, 7 Watts, 527; *Directors v. Wallace*, 8 W. & S. 94; *Directors v. Murray*, 32 Pa. 178; *Overseers v. Baker's Exors.*, 2 Watts, 280; *Gibson v. Poor District*, 122 Pa. 557; *Wertz v. Blair Co.*, 66 Pa. 18.

Error assigned was entry of judgment as above. This case was appealed to the supreme court and the following opinion delivered by Justice Green:

"The plaintiff was constituted by an act passed March 27, 1873, P. L. 54. and its powers and authority were defined by extending to it the sections eight to fifteen, inclusive, of the act of April 14, 1845, P. L. 440, entitled 'An act to establish an asylum for the insane poor of this commonwealth, to be called the Pennsylvania State Lunatic Hospital and Union Asylum for the Insane;' and also sections from one to five, inclusive, of a supplement to said act, passed April 8, 1861, P. L. 248.

"By the twelfth section of the first of these acts it was enacted, 'That the several constituted authorities, having care and charge of the poor in the respective counties, districts and townships of this commonwealth, shall have authority to send to the asylum such insane paupers under their charge as they may deem proper subjects; and they shall be severally chargeable with the expenses of the care and maintenance, and removal to and from the asylum, of such paupers.'

"It cannot be doubted that, under the provisions of this section, it was entirely competent for the overseers of the poor district to send to the asylum such insane paupers under their charge as they might deem proper subjects, and that district

would be responsible for the expenses of the care and maintenance of such paupers. The thirteenth section of the act provided that if the overseers or directors did not pay the expenses of the care and maintenance of the paupers, the trustees of the asylum might recover the same as debts of like nature are collected.

"It is contended for the appellee that the fourth section of the act of 1861 gave a different remedy for such care and maintenance, and therefore the remedy given by the twelfth and thirteenth sections of the act of 1845 was no longer in force, and there could be no right of action against the poor district.

"The fourth section of the act of 1861 is in these words: 'That whenever an indigent insane person shall hereafter be sent to the said hospital, the city or county from which he or she was sent shall be liable to the trustees of the hospital for his or her maintenance, and shall have remedy over against the proper township, where by existing laws the township is liable for the support of such pauper, and the overseers of the poor of such township shall have remedy over against the property of the pauper, or against any relative required by the law to maintain him or her, to the extent of their liability under the poor laws.'

"It is argued for the appellant that this remedy is exclusive and no other remedy can be pursued. We cannot assent to this contention for several reasons. It will be observed that the same act of 1873, which gives the remedy against the poor district by the twelfth section of the act of 1845, creates also a liability on the part of the city or county from which the pauper is sent. It cannot be said, therefore, that the legislature intended to give two inconsistent remedies by one and the same act, and that one of the said remedies being given operates as a repeal of the other. While it is true the act of 1861 was passed after the act of 1845, neither of them was applicable to this plaintiff except by the act of 1873, and by that act both remedies were given at the same instant, and

by the same legislative breath. So far as this plaintiff is concerned it never had either remedy prior to the passage of the act of 1873, and it acquired them both at the same moment. It is impossible to say, therefore, that either one was intended to be repealed or substituted by the other. The consequence is that we must conclude that it was the legislative intent to confer both remedies at the same enactment, and that they should be regarded as concurrent and cumulative and not as conflicting, or the one as exclusive of the other.

"That this is the proper construction of the act of 1873 is manifest from other considerations. It will be observed that the fourth section of the act of 1861 merely provides that the city or county shall be liable to the trustees of the hospital, but immediately adds that the city or county shall have remedy over against the township. It is certain, therefore, that it was not intended to take away the liability of the township, and to substitute that of the city or county, because it is especially provided that the liability of the township shall remain, and may be enforced by the city or county. The legal effect of this is that there is no ultimate liability of the city or county, but only of the township. The whole effect of the legislation therefore is, that, so far as the trustees of the asylum are concerned, they have a remedy against the city or county, as well as against the townships. The township is liable in any event, for the city or county, paying the asylum's claim for care and maintenance can collect it from the township. We see nothing inconsistent in the two acts of 1845 and 1861 in this respect. The two can stand together perfectly so far as this subject is concerned, and as there is no repealing clause in the act of 1861, and nothing but the giving of an additional remedy to the asylum, it may avail itself of either at its own discretion. The fifth section of the act of 1861 recognizes fully the concurrence of the two remedies, by providing that in all cases where money is due to the hospital by any township or county, on account of the maintenance of any person sent there by the proper author-

ities, and no suit for the recovery thereof is pending, the treasurer of the hospital may send a statement of the account with notice of the amount claimed, to be served on the commissioners of the county, or the overseers of the township, and if the same is not paid within thirty days, they can place the claim in the hands of the attorney-general, who may bring suit in the county of Dauphin for the recovery of the amount due, and proceed to the collection of the same. The right to collect claims either against the township or the county is here fully recognized.

"The cases of Danville, etc., *Poor District v. Montour*, 75 Pa. 35, and *Wimer v. The Overseers of North Township*, 104 Pa. 317, are cited as in hostility with the foregoing principles, but it is a mistake; they do not contain any such doctrine; no such question was raised in either of them. The first of these cases arose under the provisions of the acts of 1845 and 1861, regarding the commitment of persons found to be insane, upon trials in the criminal courts, as to whom there is only the special remedy provided by the acts, which of course must be strictly followed. The second arose upon a contract made by the overseers with another person, who agreed to pay a specific sum for the support of a pauper, and who actually did pay all the expenses, but the overseers sought to compel him to pay the whole amount of the contract, which was in excess of the amount actually required, and this court held that the contract was *ultra vires* as to the excess, and could not be enforced.

"The case was decided by the learned court below upon the ground that it was not affirmatively proved that the insane paupers in question were under the charge of the overseers by virtue of an order of relief, or a subsequent order of approval, and therefore there could be no recovery. In other words, the plaintiff was bound to prove, not only that the paupers were sent, or delivered to them by the overseers, to be cared for and maintained, but also that, as between the overseers and the poor district, they had the paupers in

charge by means of an order of relief, or a subsequent order of approval. If this be so it is difficult to see why a merchant who sold the overseers food, clothing or other necessities, for the use of the paupers, should not be required to prove, in an action to recover the value of the goods, that all the paupers for whose use the goods were purchased and used, were under the charge of the overseers under orders of relief or approval regularly issued by competent authorities.

"The direct question does not appear to have been before this court heretofore, but we think there is a manifest difference between the cases cited by the learned judge of the common pleas in his opinion, and this case. Those decisions were all instances in which there was no action, official or otherwise, by the overseers, but were claims by individuals for services rendered, or necessities furnished, without any action by the overseers and without any previous order of relief. In some of them the pauper died before any order of approval was maintained, and yet the district was held liable, as in *Directors of the Poor v. Wallace*, 8 W. & S. 94, where we held that the directors were liable to pay the funeral expenses of the pauper, though no order of relief was issued, and only a certificate by two magistrates was granted after the death of the pauper, stating his destitute condition and approving the plaintiff's expenditure.

"In *Poor Directors v. Worthington*, 3 Pa. 160, the claim was by a physician for services in amputating the arm of a person who was injured in a railroad accident. He was held entitled to recover, upon proving that he was a poor person, though he never was in charge of the overseers, no order of relief had been obtained, and no order of approval was granted until more than two years after the accident. In these and similar cases the liability of the district was placed upon the ground of emergency, and also upon the general ground that the district is subject to a legal duty to provide for the care and maintenance of its poor persons and for the payment of their funeral expenses.

"But in the present case the question is quite different. By the twelfth section of the act of 1845 the several constituted authorities having care and charge of the poor in their respective counties, districts and townships, 'have authority to send to the asylum such insane paupers under their charge as they may deem proper subjects;' and upon their doing so the several counties, districts or townships are made 'chargeable with the expenses of the care and maintenance and removal to and from the asylum, of such paupers.' In other words, the occasion of liability of the district is the action of the overseers. The words 'having care and charge of the poor,' are mere words of description of the officials, indicating their personality by a general description of their duties. And so, describing the persons whom they may send to the asylum, the act says, 'such insane persons under their charge, as they may deem proper subjects;' and it is they, the officials, the overseers, who are to decide, as between them and the asylum, what persons they regard as insane persons under their charge. This is an official function which they alone are authorized to discharge. If they are guilty of any dereliction of duty they may be answerable as for a breach of duty to the district which they officially represent. But as to other persons having dealings with them within the time or scope of their authority, surely it cannot be required that they shall be obliged first to institute an inquiry into the regularity of an official action of these 'constituted authorities,' before they may contract with them. In this particular case there is no question, indeed, it is affirmatively proved and is not disputed, that the officials who placed these insane paupers in the asylum were the regularly 'constituted authorities,' for this purpose, of Bellefonte borough. They were the overseers of Bellefonte borough, both *de facto* *et de jure*, and, as such, were the only persons who could act in the matter in question. Upon the most familiar principles applicable to the acts of such officials, they and the principals they represent, are bound by their action. In *Com. v. Slifer*,

25 Pa. 23, we said, speaking of one who an officer *de facto* but not *de jure*, 'He was merely the officer *de facto*. His acts are good so far as others are concerned.'

'At least three perfectly well established legal principles are applicable to the case, all of which are fatal to the defence. (1) The insane poor persons in question were placed in the asylum by the regularly constituted authorities of the poor district of Bellefonte acting within the scope of their authority, and holding their offices *de facto* and *de jure*, and therefore the district is bound. (2) The maxim, *omnia præsumentur rite esse acta*, requires that their acts are presumed to be rightly done, without specific proof to that effect. And (3) estoppel. The persons who placed these insane poor persons in charge of the plaintiff, are the same official persons as the present overseers, and cannot be heard to aver that when they delivered them to the plaintiff they were acting without proper authority. Whether they are the same individual persons matters not, they were the same official persons, and by their acts the district is bound.

'In *Com. v. Slifer*, 25 Pa. 23, Lewis, J., said: 'But the acts of public officers, where the rights of the public require it, should be construed with liberality. There is always a presumption that they are in accordance with the law. The presumption can be repelled only by clear evidence of illegality.' But here there was no illegality as between the defendant poor district and the plaintiff insane hospital. As to the plaintiff the overseers of the district had the lawful right to place with the plaintiff such insane paupers as they might deem proper subjects. In the exercise of that right the overseers placed these three insane paupers in charge of the plaintiff, and in at least two of the cases they gave bonds for the payment of specific weekly sums for their maintenance and support. There was no serious question on the trial as to the fact of insanity, or the fact of pauperism, and no question whatever as to the correctness of the amount claimed. The verdict of the jury must be taken to have settled the facts

of poverty and insanity, and the only question reserved by the court below was as to the necessity of there being proof in the case of an order of relief or order of approval. But the question could affect only the regularity of the preliminary proceedings, and we are of opinion that as against this plaintiff, the district was bound by the act of the overseers, and cannot now, after having received all the benefit of the relief and support furnished by the plaintiff, be heard to say that their own legally constituted officials omitted to comply with some legal requirement in acquiring jurisdiction of the paupers, in the first instance. When the district, through its overseers, placed these paupers with the plaintiff, they must be deemed to have asserted that the paupers were what the overseers claimed them to be. It is too late, and it would be too unjust to permit them to assert the contrary now.

"The judgment of the court below is reversed, etc." ¹⁵

Act June 26, 1895, P. L. 388. P. & L. Dig. Sup. 386, § 10.

Insane Prisoner to be Removed to Asylum—Maintenance.

Section 1. That upon commitment by a justice of the peace or other committing magistrate to a county jail or other prison within this commonwealth of any person on a criminal charge less than felony, who, upon examination by any two physicians of at least five years' practice, shall be certified by them to be insane, it shall be the duty of county commissioners of such county, with the approval of the court of quarter sessions of such county, or one of the judges thereof to, within fifteen days after such examination, certification and approval, at the expense of such county, remove such indigent insane person to the proper hospital for the insane, there to be maintained at the expense of such county as indigent insane persons are now kept and supported, until the proper legal settlement of such indigent insane person can be ascertained and determined.

¹⁵ *Danville State Hospital for the Insane v. Bellefonte Borough Overseers*, 163 Pa. 175.

"Maintenance," Definition of, [by Hon. W. U. Hensel, Late Attorney-General of Pennsylvania.]

November 21, 1893.—"I have received your communication of November 18, transmitting to me certain correspondence relative to the question that has arisen between the secretary of the state board of public charities and the trustees of the hospital for the insane at Warren, on an item charged in the maintenance account of the hospital, for the quarter ended August 31, 1893, and making certain inquiries as to what lawfully constitutes 'maintenance' in such cases.

"As I understand the question submitted to me, from the correspondence which is transmitted with your letter, it appears that the trustees of the Warren hospital purchased for hospital purposes a property adjoining that bought, constructed, owned and maintained by the commonwealth, for the general and ordinary purposes of the state hospital, that the 'items objected to by Mr. Biddle' were expenditures for furnishing this building, mostly in the nature of new furniture, such as carpets, chairs, books, hardware, lumber, etc., and that the objections to paying for these out of the maintenance account are, that they are not strictly items of maintenance, but were expenditures for additional buildings, or for the furniture and equipment thereof, and were incurred for the fitting up of accommodations on additional land for an additional number of patients.

"Assuming this to be the case, I am of the opinion, and I so advise you and the secretary of the state board of public charities, that such expenditures are not properly embraced in or covered by 'a maintenance account,' and that the moneys specially appropriated by the legislature for the maintenance of patients in an insane hospital cannot properly be applied either to the purchase of additional lands, the erection of additional buildings, or the furnishing or equipment thereof. It has been the policy of the legislature, when a new asylum or hospital was to be established, or additional lands purchased, or new buildings erected, or improvements

made at existing institutions, to make specific appropriations therefor. In the case of the hospital for the insane at Warren itself, the act of June 2, 1893, made a specific appropriation for a building 'for a Turkish bath, a gymnasium, a reading room, a museum,' etc. The 'maintenance' of the inmates of such an institution, or of the property thereof, comprehends expenses incurred for food and clothing and care of the inmates, and for repairs to buildings and equipments, such as are necessary to keep the existing institution up to its original condition, as is held in the letter of Mr. Biddle to you of November 9, 1893.

" 'Maintenance,' according to Worcester, is 'to keep from change; to preserve;' according to Webster, 'to hold or keep in any particular state or condition . . . to keep up; not to suffer to fail or decline;' and according to the Century Dictionary, 'to hold in an existing state or condition; . . . preserve from lapse, decline, failure or cessation; the act of maintaining, keeping up, supporting or upholding, preservation.'

"There is nothing in the ordinary course of legislation on this subject, nor in the definition of terms by the lexicographers to expand the term 'maintenance' into enlargement addition, improvement or construction. A fair and liberal construction of appropriations for maintenance would be to supply dilapidation, to arrest, prevent or remedy decay, to maintain or restore, to erect when destruction has taken place; for example, to paint buildings from time to time; to restore worn-out furniture; to erect a fence where one has fallen down; to replace insecure or dilapidated walls, ceiling or foundations, etc.; but the purchase of new grounds and buildings, the original furnishing of the same, the erection of a costly fence where none had stood or had been needed before, and, in short, original acquirement and improvement of real estate are not, in my judgment, property comprehended within an appropriation for 'maintenance.'

"In the immediate case before me, I am not able to determine whether items as 'pay roll,' 'fuel' and 'books' fall within

my view of what is properly maintenance or not; but, under the facts as stated, I am quite positive that carpets, chairs, hardware, cooking utensils, etc., procured for the furnishing of a new building, are not maintenance, and I am of the opinion that an application of the principles of law, which I have laid down, to the particular facts in this case, will enable you, the superintendent of the board of public charities, and the trustees, to determine with precision what items of the bill in dispute are, according to my views, properly embraced within the appropriation for maintenance." ¹⁶

Pennsylvania State Lunatic Hospital.

We also give such portions of the act of April 14, 1845, P. L. 440, entitled An act to establish an asylum for the insane poor of this commonwealth, to be called "The Pennsylvania State Lunatic Hospital and Union Asylum for the Insane," and its supplements, passed April 8, 1861, P. L. 248, and March 27, 1873, P. L. 54, respectively, as these are a part of our poor laws and are frequently referred to by the supreme court in construing the act of 1836.

Act April 14, 1845, P. L. 440.

An Act to establish an asylum for the insane poor of this commonwealth, to be called "The Pennsylvania State Lunatic Hospital and Union Asylum for the Insane," approved April 14, 1845.

Admission of Patients.

Section 3. The admission of insane patients from the several counties of the commonwealth, shall be in the ratio of their insane population: Provided, That each county shall be entitled to send at least one insane patient.

Charges. P. & L. Dig. 2766, § 7.

Section 9. Indigent persons and paupers shall be charged for medical attendance, board and nursing, while residents

¹⁶ Warren Hospital for Insane, 15 Pa. C. C. R. 83.

in the hospital, no more than the actual cost; paying patients, whose friends can pay their expenses, and who are not chargeable upon townships or counties, shall pay according to the terms directed by the trustees.

Insane Criminal Admitted. P. & L. Dig. 2766, § 8.

Section 10. The courts of this commonwealth shall have power to commit to said asylum any person, who having been charged with an offense punishable by imprisonment or death, who shall have been found to have been insane, in the manner now provided by law, at the time the offense was committed, and who still continues insane; and the expenses of said persons, if in indigent circumstances, shall be paid by the county to which he or she may belong by residence.

Legal Settlement. P. & L. Dig. 2767, § 9.

Section 11. That it shall be the duty of the court, in all cases where they shall commit any person to the asylum, to certify to the trustees the legal settlement of such person, if he or she have any legal settlement in this commonwealth; and if such person have no such settlement, then to certify the place of residence of such person at the time of offense committed, on application made, and the poor district so certified to be the place of settlement or residence of such person, shall be chargeable with the expenses of his or her care and maintenance and removal to and from said asylum:

Proviso.

Provided, That the settlement or residence of any such person shall not be so certified until after due notice shall have been given to the constituted authority having charge of poor in the district to be charged thereby.

Insane Paupers. P. & L. Dig. 2767, § 10.

Section 12. The several constituted authorities having care and charge of the poor in the respective counties, districts and townships of this commonwealth, shall have authority to send to the asylum such insane paupers, under their charge, as they may deem proper subjects; and they shall be severally chargeable with the expenses of the care, and maintenance, and removal to and from the asylum of such paupers.

Charges, How Collected. P. & L. Dig. 2767, § 11.

Section 13. If the guardians, directors, or overseers of the poor, to whom any patient who shall be in the asylum is chargeable, shall neglect or refuse, upon demand made, to pay to the trustees the expenses of the care, maintenance and removal of such patient, and also, in the event of death, of the funeral expenses of such patient, the said trustees are hereby authorized and empowered to collect the same as debts of a like nature are now collected.

Power of Courts to Commit. P. & L. Dig. 2768, § 12.

Section 14. That if any person shall apply to any court of record within this commonwealth, having jurisdiction of offenses which are punishable by imprisonment for the term of ninety days or longer, for the commitment to said asylum any insane person within the county in which such court has jurisdiction, it shall be the duty of said court to inquire into the fact of insanity in the manner provided by law, and if such court shall be satisfied that such person is, by reason of insanity, unsafe to be at large, or is suffering any unnecessary duress or hardship, such court shall, on application aforesaid, commit such insane person to said asylum.

Preferences. P. & L. Dig. 2768, § 13.

Section 15. In order of admission, the indigent insane of this commonwealth shall always have precedence of the rich; and while the finances of the state do not permit ample provisions for all cases of insanity, recent cases shall have preference over those of long standing.

A supplement to the several acts of assembly relative to the Pennsylvania State Lunatic Hospital, approved April 8, 1861, P. L. 248.

Court to Inquire into the Fact of Insanity. P. & L. Dig. 2802, § 129.

Section 1. That when application shall be made under the fourteenth section of the act of the 14th of April, one thousand eight hundred and forty-five, to which this is supplementary, to any court of this commonwealth, for the com-

mitment of any person to the Pennsylvania State Lunatic Hospital, it shall be lawful for such court to either inquire into the fact of insanity, in a summary way, after giving the notice required by law to the alleged lunatic, or his or her friends or kindred, or by avoiding an inquest at the option of the court, and in all cases it shall be lawful for the several courts of this commonwealth to use their discretion in sending insane persons, who are unsafe to be at large, to said hospital, or cause them to be confined elsewhere as the said courts shall believe the case to be curable or otherwise.

Persons Acquitted on Ground of Insanity. P. & L. Dig. 2802, § 180.

Section 2. No person shall hereafter be sent to said lunatic hospital under the tenth section of the act of April 14, 1845, or any other law of this commonwealth, who shall have been charged with homicide, or having endeavored or attempted to commit the same, or to commit any arson, rape, robbery or burglary, and have been acquitted of any such offenses on the ground of insanity, or been proceeded against under the fifty-ninth or sixtieth sections of the act of June 13, 1836, relative to lunatics and habitual drunkards, where the court trying such person, or hearing the case, shall be satisfied that it is dangerous for said lunatic to be at large on account of having committed, or attempted to commit either of the crimes aforesaid, but such person shall be continued in the penitentiary of the proper district or the prison of the proper county: Provided, That the said court shall still have power to order any such person to be confined in the said lunatic hospital, if, on full examination, it shall be satisfied that there is reason to believe that a cure of the insanity may be speedily effected by sending him or her thereto.

Powers of Trustees and Physicians. P. & L. Dig. 2803, § 181.

Section 3. In every case where a lunatic has been, or shall be committed to said hospital, after an acquittal of any crime on the ground of insanity, or after an investigation in court under the fifty-ninth and sixtieth sections of the act of June 13, 1836, or on account of it being adjudged dangerous for such lunatic to be at large; and in all cases where any lunatic has been, or shall be removed thereto from either of the peni-

tentiaries, or any prison of this commonwealth, under the order of a judge, or of any court, it shall be lawful for the trustees of said hospital, with the aid of the attending physician, to inquire carefully into the situation of such lunatic, and if a majority of the board, including the physician, shall be satisfied that there is no reasonable prospect of a cure of the insanity being effected by a retention of the lunatic in the hospital, they shall, at the expense of the proper city or county, cause him or her to be removed to the prison of the proper county, or the penitentiary from which he or she was sent.

Liability for Indigent Insane. P. & L. Dig. 2803, § 132.

Section 4. That whenever an indigent insane person shall hereafter be sent to said hospital, the city or county from which he or she was sent shall be liable to the trustees of the hospital for his or her maintenance, and shall have remedy over against the proper township where by existing laws the township is liable for the support of such pauper, and the overseers of the poor of the township shall have remedy over against the property of the pauper, or against any relative required by law to maintain him or her, to the extent of their liability under the poor laws.

Recovery of Money Due, and Proceeding. P. & L. Dig. 2804, § 133.

Section 5. That in all cases where money is now or hereafter shall become due to said hospital from any township or county, on account of the maintenance of any person sent there by the proper legal authorities and no suit is now pending for the recovery thereof, it shall be lawful for the treasurer of the hospital to cause a statement of the account, with notice of the amount claimed, to be served on the commissioners of the proper county, or the overseers of the poor of the township, and if the same is not paid within thirty days after such notice and demand, to place such claim in the hands of the attorney-general of the commonwealth, whose official duty it shall be to cause suit to be brought therefor in the name of the corporation, in the court of common pleas of Dauphin county; and the whole proceeding for the recovery of such debt shall be conducted in the manner and the action have like precedence as suits for claims due the common-

wealth; and Sections 1 and 2 of the act of May 8, 1855, P. L. 515, be and the same are hereby repealed.

An Act to organize the State Hospital for the insane at Danville, and provide for the government and management of the same, approved March 27, A. D. 1873, P. L. 54.

Certain Provisions. P. & L. Dig. 2782, § 55.

Section 4. The several sections of the act of assembly, approved April fourteenth, one thousand eight hundred and forty-five, from Section 8 to 15 inclusive, also the several sections of the act of assembly, approved April eighth, one thousand eight hundred and sixty-one, from Section 1 to Section 5, inclusive, are hereby extended and made applicable to the state hospital for the insane at Danville.

Notice of Commitment Must be Given to Pauper's District. ...

"An insane pauper was committed to the state asylum by a court and no certificate of his settlement or notice to the authorities of his settlement was given at the time of the commitment under the act of April 14, 1845, Section 2. Held, that the county by whose court the commitment was made could not recover from the pauper's district the amount paid for his maintenance at the asylum.

"A poor district cannot be made liable for such maintenance unless upon notice; that it may come in and show that the pauper had some other settlement."¹⁷

Act April 14, 1893, P. L. 20. P. & L. Dig. 2808, § 150.

An Act to provide for better protection of female insane patients in transit.

Be it enacted, etc., That whensoever any indigent female insane patient is to be removed from any county almshouse to a state hospital or asylum for the insane, or from one state hospital or asylum for the insane to another state

¹⁷ Danville and Mahoning Poor District v. Montour County, 75 Pa. 35.

hospital or asylum, or from the home of such indigent patient to an almshouse, hospital or asylum, or when returned from such institution to her home, it shall be the duty of the court under whose order such patient is committed, or of the commissioners of the county or overseers of the poor of the district to which such patient is chargeable (if not committed by the court), to provide a female attendant for every female patient in transit at the expense of the proper county or poor district unless such patient is accompanied by a member of her family.

Act May 27, 1897, P. L. 110. P. & L. Dig. Sup. 386, § 11.

An Act to amend an act approved April 14, 1893, entitled "An act to provide for the better protection of female insane patients in transit," fixing a penalty for the violation of the said act and providing the manner such penalty shall be recovered.

Section 1. After reciting said act, proceeds, "Be and the same is hereby amended by the addition of the following section:

"Section 2. Any public officer, superintendent, steward, director of poor or other person, transferring as aforesaid any insane female patient, who refuse or neglect to observe the provisions of this act as hereby amended, shall be subject to a penalty of two hundred and fifty dollars for each such refusal or neglect, which penalty may be sued and recovered in the name of the commonwealth by the district attorney of the county in which such act of refusal or neglect occurred, and the sum so recovered, shall be paid into the treasury of the state."

Act May 24, 1897, P. L. 202.

An Act authorizing the overseers of the poor of the respective counties, townships and boroughs of this commonwealth, to sell and dispose of the real estate of paupers insane, or to borrow money upon mortgage of pauper real estate.

May Sell Real Estate of Insane Pauper. P. & L. Dig. 3557, § 156.

Section 1. Be it enacted, etc., That in all cases where an insane person or persons are or shall, in any manner, become

chargeable as insane paupers upon any county, township or borough of the commonwealth of Pennsylvania, and who shall be the owner or owners of any real estate when becoming so chargeable, the overseers of the poor of such county, township or borough shall immediately, upon receiving such insane pauper or paupers, take charge of his, her or their real estate, and, when necessary for the maintenance of such insane pauper or paupers, with the consent of the court of quarter sessions of the proper county, shall sell or dispose of such real estate by public or private sale, in such manner as the said court may deem best, and to apply the proceeds or so much thereof as may be necessary, to defray the expenses incurred in the support, maintenance and funeral of such insane pauper or paupers. And in case of death of such insane pauper or paupers, or when they shall in any way cease to be a charge as aforesaid, the balance or residue of such proceeds, if any shall remain, shall be paid to the legal representatives of such pauper, upon indemnity being made to such overseers to secure them from the claims of all other persons: Provided, That the provisions of this act shall not apply to insane paupers having wife, husband or children.

May Borrow Money and Mortgage Pauper's Real Estate. P. & L. Dig. 3558, § 157.

Section 2. That said overseers of the poor shall, with like consent of the said court as aforesaid, also have power and authority to borrow money and mortgage the real estate of any pauper as aforesaid as security therefor, for the support and maintenance of such pauper or paupers when necessity may require it.

Act June 26, 1895, P. L. 321. P. & L. Dig. Sup. 383, § 2.

An Act relating to the indigent insane of poor districts, and providing for the same allowance for their treatment as is given by the commonwealth to state hospitals for the insane, under the conditions prescribed by the act of assembly, approved June thirteenth, one thousand eight hundred and eighty-three.

Section 1. Be it enacted, etc., That poor districts in this commonwealth which have supplied or may hereafter supply a hospital for the care and treatment of the indigent insane,

according to the plans and specifications approved by the board of public charities, which said insane hospital shall be provided with all the modern appliances for the treatment of the insane, with a medical superintendent of experience in the treatment of mental diseases, and who shall be in actual practice for at least five years, in which the said insane are attended by trained and skilled nurses and in every way receive the same care and attention as they would in any state hospital for the insane, shall hereafter be entitled to the same allowance for the care and treatment of the indigent insane as is given by the commonwealth to state hospitals for the insane, under the conditions prescribed by the act of assembly approved June thirteenth, one thousand eight hundred and eighty-three, entitled "An act to provide for the care and treatment of the indigent insane of the several counties of the commonwealth in the state hospitals for the insane."

Act June 22, 1897, P. L. 177.

An Act providing for the return of paupers and indigent insane persons, not having a legal settlement within this commonwealth, to any other state or country to which they may belong.

Legal Residence to be Determined on Commitment. P. & L. Dig. Sup. 384, § 5.

Section 1. Be it enacted, etc., That in all cases of commitment of indigent insane persons to any of the state hospitals for the insane, it shall be the duty of the court in making such commitment, to determine the legal residence of such indigent insane person, whether such settlement be within the commonwealth or in any other state or country.

Proceedings in Case Patient is a Non-Resident. P. & L. Dig. Sup. 385, § 6.

Section 2. If upon such investigation the court making the commitment as aforesaid shall find that such person whose commitment to the said institution is necessary has not a legal residence within the state of Pennsylvania, or if the question of his legal residence is in doubt, it shall be the duty of the clerk of said court, without delay, to notify the state board of charities, and if said court commits such person to

any of the state asylums for the insane, notwithstanding that he has not gained a legal residence, it shall be the duty of the court to give the reasons for such recommendation.

State Board of Charities Investigate Residence. P. & L. Dig. Sup. 385, § 7.

Section 3. It shall be the duty of the state board of charities, either by a committee of its members or by its secretary or by such agent as it may designate, to investigate the question of the legal residence of such person as shall be reported to the said board, and such committee, secretary or agent shall have authority to send for persons and papers, and to administer oaths and affirmations in conducting such investigation.

Indigent Insane to be Returned to Legal Residence. P. & L. Dig. Sup. 385, § 8.

Section 4. If upon investigation the said board or its agent shall find that the said person is not a legal resident of the state of Pennsylvania, but has legal residence in some other state or country, they may, by a proper order addressed to the trustees of the lunatic hospital to which such indigent insane person has been committed, cause him to be returned to that state or country where he has a legal residence, or to that state or country whence he came to the state of Pennsylvania; and the actual necessary expense of returning such person shall be paid from the state treasury by warrant by the auditor-general on the state treasurer on an account settled by the auditor-general. Like proceedings shall be had in all cases where any such indigent insane person is confined in any county prison or poor house.

Arbitration of Disputed Questions of Residence. P. & L. Dig. Sup. 385, § 9.

Section 5. The state board of charities is hereby authorized and empowered to enter into agreement with the authorities of other states which shall adopt legislation, consistent with this act, for the arbitration of disputed questions between the states and the state of Pennsylvania respecting the residence of insane persons, paupers and other dependents, and for the return of such persons to their proper residence.

Practice in Committing Indigent Insane.

Petition for the appointment of three commissioners under acts of April 20, 1869, P. L. 78, and May 8, 1889, P. L. 127. C. P. Northampton county.

Scott, J., July 11, 1898: "This report is approved and order of commitment signed. The petition was presented for a commission of three persons to inquire into the fact of lunacy under the act of April 20, 1869, Section 6, P. L. 79. That procedure has prevailed in this county for a long time in the case of indigent insane, but it will not be continued unless special cause is shown in some particular case for the exercise of such exceptional jurisdiction. It is not required, and different methods are adopted elsewhere at much less expense. This remedy is not exclusive (*Danville State Hospital v. Bellefonte*, 163 Pa. 175), and it is not mandatory.

"The statute appoints it as one of the means by which indigent insane persons may be committed to a hospital for the insane, but it is cumulative only to the remedy previously existing. The act of May 8, 1889, P. L. 127, Section 2, provided that the county should be primarily liable for the cost of removal and expenses of maintenance. This was followed by that of June 25, 1895, P. L. 270, which gave the county recourse to the proper local poor district or to relatives within the class liable for support under the poor laws of 1836, and is made applicable to those committed previous to its adoption.

"The expense of this maintenance last year to the county of Northampton was \$10,800. That is properly chargeable to the poor districts from which the present inmates were committed, or to those within the degree of relationship specified in the act of June 13, 1836, Section 28, P. L. 547 (*Wertz v. Blair County*, 66 Pa. 18), if there are any such of sufficient ability.

"The cost of executing a commission, together with the expense of removal, under the present system, is more than two-fold greater than is necessary under the practice pursued be-

fore the act of 1869, and which has not been abolished. The act of 1845, incorporating the Pennsylvania State Lunatic Asylum (P. L. 440, Sections 12 and 13), directed that the overseers of the poor in any township or district should have authority to commit to the hospital insane paupers, and it charged the cost of maintenance upon them. The state hospital for the insane of the southwestern district of Pennsylvania (Norristown) was established May 5, 1876, P. L. 121. Northampton was one of the counties included. The tenth section is as follows: 'The several constituted authorities having care and charge of the poor of the respective city and counties named in this act shall have authority to send to the hospital such indigent insane under their charge as they may deem proper subjects, and they shall be generally chargeable with the expenses of the care and maintenance and removal to and from the hospital for such indigent insane.'

"The directors of the poor of Northampton county are authorized to appoint physicians for the several districts, and upon the certificate of two of these, in accordance with the provisions of the acts of assembly, April 20, 1869, Section 1, P. L. 78, and May 8, 1883, Section 18, P. L. 25, any indigent insane person may be committed to the asylum without the usual costs of a commission. Applications will therefore be referred to these overseers of the poor. As they are officially responsible for determining whether any person requires care as a public charge, the matter is more appropriate for them than for others upon whom the law has not cast this duty. There is ample check for certificates of insanity, without proper caution or due examination, in the liability to prosecution and imprisonment of any physician for negligence in this respect (Pepper & Lewis' Digest, p. 1227, Section 329), and to an action for damages: *Williams v. LaBarre et al.*, 141 Pa. 149."¹⁸

¹⁸ *Friedenberger's Lunacy*, 21 Pa. C. C. R. 273.

On Sept. 5, 1898, the court promulgated the following instructions relative to commitment of indigent insane by overseers of the poor:

"(1) When application is made for removal to an asylum, of a person alleged to be insane, it must first be determined whether the patient ought to become a charge upon the public. If he was sick, would he become a proper subject for almshouse relief? The directors of the poor have no authority to send all insane persons to the asylum—only those who are indigent. Others must be sent as paid patients, at the expense of themselves or relatives.

"Non-observance of this by commissioners in lunacy, because they were without that information to determine it, possessed by overseers of the poor in the several districts, has imposed upon the county a burden largely exceeding that of other counties with an equal population. The annual expense is now \$11,000.

"(2) If the person is indigent, but has parents or grandparents, children or grandchildren able either in property or earnings, to pay for his support the weekly charge at the asylum (\$1.75 per week) if he is found to be insane, the directors of the poor shall take security for payment of this sum, as these relatives are liable for his maintenance under the acts of assembly, and the court is empowered so to order: Act June 13, 1836, P. L. 539, Section 28; April 28, 1869, P. L. 78, Section 9.

"(3) A certificate of insanity must be signed by two physicians, who reside in this state; each of them must have practiced five years; each must make a separate examination of the alleged insane person. They must not be related by blood or marriage to the person examined. The certificate must be made within one week of the examination, and be sworn to before a judge or magistrate of the county, who shall himself certify to the genuineness of the signatures and to the good repute of the physicians.

"(4) Let every physician called upon for this purpose carefully read the following act of assembly: March 23, 1876, P. L. 8, Section 1.

"If any physician shall falsely certify to the insanity of any person, and it shall appear in evidence that such false certificate was the result of negligence or deficient professional skill on the part of said physician, or that said physician signed such certificate for a pecuniary reward, or for the promise of a pecuniary reward, or for any other consideration or value whatsoever, or other than the professional fee usually paid for such services, or in which the false certificate shall tend in any manner directly or indirectly to advance said physician, other than relates to the said professional fee, then the said physician shall be guilty of a misdemeanor, and on conviction be fined not exceeding \$500 or undergo an imprisonment not exceeding one year or both or either at the discretion of the court."

"NOTE.—These provisions for examination and certificates of physicians are most important, and ought to be a check against mistakes. There is no such legal responsibility imposed upon any one in proceedings under a commission. This method now adopted secures the same protection against injury to the indigent as to others, makes a personal examination necessary, and the expense is less than one-half the usual cost of a commission."

CHAPTER XXIV.

OF THE COURT OF QUARTER SESSIONS AND THE COURT OF COMMON PLEAS.

THEIR JURISDICTION IN PAUPER CASES.

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The jurisdiction cannot be di-		Jurisdiction under act of 1846,	534
verted by an agreement,	529	Act March 26, 1862, P. L. 178,	534
Jurisdiction,	531		

Perhaps we should have commenced this work with a chapter on the jurisdiction of the courts in the administration of the poor laws. But the question of jurisdiction arises so frequently throughout the work that this chapter should be looked upon rather as a summing up, than as laying down rules of practice.

"From the earliest periods in the history of the poor laws, we find them administered by one or two magistrates in the first instance, from whose decision there was always an appeal to the justices in their quarter sessions, and this jurisdiction has been retained throughout all the various changes in the law, to the present day.

"Examine the act of 1836, section after section, and we find that all disputed matters are referred to the court of quarter sessions upon appeal, and in no place will we find jurisdiction given to any other court, and it is only when a claim is by an individual against a district in the nature of an implied or express assumpsit, or when given directly or by intendment that the common pleas obtains jurisdiction."

Woodward, C. J., says: "These common-law actions in pauper cases ought not to be favored. I know they have

been brought and sustained in a few instances—but the theory of the poor law is, that the quarter sessions are to administer it. It was intended to be a system, which, with the aid of that court, should execute itself, and work out its own results without calling in the common law. The legislature having committed the care of paupers to the quarter sessions, and clothed that court with summary powers, which are equal to all exigencies, common-law remedies would seem to be displaced by the necessary construction of the act of 1806.”¹

“In an action of assumpsit commenced in the court of common pleas of Chester county by the plaintiff below, who was a practicing physician, against the directors of the poor and of the house of employment of the county of Chester to recover for medical services rendered by him to a poor person, for which he claimed that the said directors were by law liable.

“It was contended that the court had no jurisdiction, and that if the plaintiff had any right his remedy was by petition to the court of quarter sessions, for an order on the directors for the payment of his claim. The question thus raised has never been decided by this court. Laying aside proceedings upon orders of removal which have no application in this case, and where by the nineteenth section of the act of June 13, 1836, any person aggrieved may appeal to the next court of quarter sessions, it is provided by the twenty-third section that in case any person falls sick or dies in any district before he has gained a settlement, so that he cannot be removed, the overseers of such district shall as soon as conveniently may be, give notice to the guardians or overseers of the city or district where such person had last gained a settlement, and if they shall neglect or refuse to pay the moneys expended for the use of such poor person, it is made the duty of the court of quarter sessions of the county where such poor person was last settled, upon complaint to them made to compel

¹ *Nippenose v. Jersey Shore*, 48 Pa. 406.

payment by such guardians or overseers of all such sums of money as were necessarily expended for that purpose. This provision is evidently confined to the case of the overseers of one district relieving a pauper chargeable to another. In those cases under the poor laws in which a special remedy is provided in the court of quarter sessions, that remedy must be pursued. By the thirteenth section of the act of March 21, 1806, 4 Smith, 312—a statute of frequent reference in our books—‘in all cases where a remedy is provided or duty enjoined, or anything directed to be done by any act or acts of assembly of this commonwealth, the direction of the said acts shall be strictly pursued and no penalty shall be inflicted or anything done agreeably to the provisions of the common law in such cases further than shall be necessary for carrying such act or acts into effect.’ Applying the rule established by this legislative precept, it follows that in all controversies between different districts, either in case of orders of removal or expenses incurred where such order could not be procured in time, the quarter sessions have the sole and exclusive jurisdiction. This remits to that tribunal in a summary proceeding the decision of all such questions. ‘The design of the act, says Sergeant, J., ‘was to give the quarter sessions jurisdiction of this class of cases, so as to enable them to act promptly and with as little expense as possible in compelling those districts to maintain paupers on whom the burden was imposed by law:’ *Versailles v. Mifflin*, 10 Watts, 360. ‘The policy of the statute,’ says Woodward, J., ‘is to commit pauper cases to the jurisdiction of the quarter sessions that speedy relief and justice may be administered:’ *Sugarloaf v. Schuylkill*, 8 Wr. 481. ‘The legislature subsequently,’ says the same learned judge, when chief justice, ‘having committed the care of paupers to the quarter sessions and clothed that court with summary powers; which are equal to all exigencies, common-law remedies would seem to be displaced by necessary construction of the act of 1806: *Nippenose v. Jersey Shore*, 48 Pa. 402; and see *Marion Township v. Spring*

Township, 50 Pa. 308. These are all cases between contending districts. I have made as careful and thorough a research as time would allow through all the reported cases in this court, and have found only five in which jurisdiction was assumed in the common pleas by a common-law remedy. The first is *North Whitehall v. South Whitehall*, 3 S. & R. 117, where a township had been divided, and an action was brought by one part against the other to recover its proportion of the expenses of a pauper who had been previously a charge on the old township. No question was made as to jurisdiction, and, indeed, that case was not properly within any section of the then existing act of March 9, 1771, 51 Pa. 332. The next is *Hopewell v. Independence*, 12 Pa. 92, in which the controversy also arose out of the division of a township. To this succeeded *Bradford v. Keating*, 27 Pa. 275, and *Schuylkill v. Montour*, 44 Pa. 484, in which it was held that an order for the removal of a pauper, unappealed from, is against all parties bound by it, and that hence in a civil action brought by overseers of a township for maintenance and expenses of a pauper against the poor directors of a county to which he had been removed by an order of removal, unappealed from, the question whether the common pleas had jurisdiction to try a settlement case does not arise. The last case which I have found is *Nippenose v. Jersey Shore*, 12 Wr. 402, before cited, which was an action by one township to recover for the maintenance of a pauper chargeable to the defendants, and would seem to have been within the twenty-third section of the act of 1836. The question of jurisdiction, though adverted to in the opinion, was not, however, raised or passed upon.

“But although by the act of 1836 a special remedy is enacted in the case of one poor district paying the expenses of a pauper for which another is legally liable, and, therefore, by the canon of construction established by the act of 1806, such remedy must be pursued to the exclusion of the common law, yet we look in vain through this or any other act

for such a provision where the expenses are incurred, by an individual. Actions at common law in such cases have been often sustained, and, though *sub silentio*, it must be regarded as very conclusive evidence of the sense of the bench and the bar upon the subject: *Roxborough v. Bunn*, 12 S. & R. 292; *Overseers v. McCoy*, 2 Penrose & Watts, 432; *Directors v. Wallace*, 8 W. & S. 94; *Franklin v. Pennsylvania State Hospital*, 30 Pa. 522; *Directors of Westmoreland v. Murry*, 32 Pa. 178; *Directors of Chester v. Worthington*, 38 Pa. 160.”²

In an action of assumpsit by the county of Blair against Jacob Wertz, to recover the amount paid by the plaintiff to the state lunatic asylum for the support of John Wertz, a son of the defendant and an insane pauper, who was of full age, and who, upon an indictment against him for breach of the peace had been found by the jury to be insane and by order of the court of quarter sessions had been sent to the state lunatic asylum.

On the trial it appeared that the defendant was of sufficient ability to maintain his son.

Read, J., *inter alia*, says: “There can be no doubt that the relatives of a pauper mentioned in the twenty-eighth section of the poor law, if competent and of sufficient ability, are compellable to maintain him, and that the jurisdiction in relation to it is vested in the court of quarter sessions, whose power is limited to \$20 per month.”

John Wertz, Jr., was an insane pauper, committed to the state lunatic asylum by the quarter sessions of Blair county, as unsafe to be at large, at the expense of the county of Blair, who have paid for his maintenance at the hospital, and now seek to recover the amount from his father, who is of sufficient ability to maintain his insane pauper son.

“There can be no doubt of his ultimate liability, but the question before us is, whether this is the proper form of proceeding. We think not. The proceeding should be in the

² *Directors of the Poor v. Malany*, 64 Pa. 144.

court of quarter sessions, which by the acts of 1836 and 1857, have ample powers to make the proper orders and decrees, and to enforce them.”³

In an action of assumpsit brought by the county of Montour against the poor district of Danville and Mahoning, Joseph Harmon was indicted in the quarter sessions of that county for an assault, but was acquitted on the ground of insanity. The court thereupon directed him to be transferred to the state lunatic hospital, to be there kept and maintained at the expense of the county. It was for the money thus expended for the support of this insane pauper in the asylum that this action is brought.

One of the questions presented for solution was: Can this form of action be maintained by the county against this poor district? The plaintiff in error contended that the only remedy for the county is in the quarter sessions by complaint as by one poor district against another under the twenty-third section of act of June 13, 1836. Gordon, J., in his opinion, *inter alia*, says: “To this doctrine, however, we cannot assent. The cases wherein the quarter sessions have jurisdiction in civil cases are extraordinary and specific, forasmuch as they are foreign to its general jurisdiction. Without specific provision made by statute, it is certain that even in cases for the maintenance of paupers one district could not enforce payment against another by the process of this court. Unless, therefore, we had what we have not, an act of assembly authorizing the collection of this kind of claim of counties against townships through the court of quarter sessions, the theory of the plaintiff in error must fail. Besides this, we are inclined to think that in cases like the present, where the county pays the hospital for the maintenance of a lunatic, where the township is ultimately liable, the county is subrogated to the rights and remedies. But under the thirteenth section of the act of 1845, the trustees of the hospital were

³ *Wertz v. Blair County*, 66 Pa. 18.

authorized to collect such claims as debts of a like nature were then collectible; this, of course, limited their remedies to the civil courts. We must conclude, therefore, that this action was well brought so far as the form of action and the *forum* are concerned. We may say further, that a precedent is found in the case of *Lower Augusta v. The County of Northumberland*, 37 Pa. 143, where the action was assumpsit by the county against the township for a claim similar to the one in hand.

"We also refer to the case of *The Overseers of Harmony Township v. County of Forest*, 91 Pa. 404, which was an action of assumpsit, and was sustained under the fourteenth section of the act of April 22, A. D. 1863, P. L. 539, entitled 'An act supplementary to an act incorporating the Western Pennsylvania Hospital.' " 4

A rule to certify the legal residence of a pauper lunatic. The proceedings were instituted in the court of common pleas of Butler county. Nathaniel Sefton was declared a lunatic, without property, and the commission in lunacy found that the last place of legal residence of the lunatic was in the city of Allegheny. The court committed Sefton to the insane asylum at Warren, Pa. A petition was subsequently presented in the form of a motion on behalf of Butler county, for a rule on the department of public charities of Allegheny City to show cause why the city of Allegheny should not be certified as the place of residence of said Sefton. The court on reargument sustained the motion to strike off the rule by Hazen, P. J., in the following opinion:

"After careful perusal of this record and upon consideration of the question involved, we are persuaded that this motion must be sustained and granted, and that this court is without jurisdiction in the premises. We cannot read into the case what the legislature omitted, in order to give this court jurisdiction. Had the proceedings been commenced

⁴ *Danville & Mahoning Poor District v. Montour County*, 75 Pa. 35.

in the quarter sessions, doubtless there would have been no trouble, but such was not the case. There is not even a suggestion to have the proceeding certified to that court. Rule discharged, and affirmed by the supreme court.”⁵

The court, January, 1879: “It would be enough to say that the defendants are but a department of the city, and if there is any liability the proceeding ought to be against the city itself. The rule in the quarter sessions of Lycoming county was taken against the department, and served upon its officers, and so was the rule to take the depositions. The city was in no way bound by such a rule or service. But passing this fatal defect in the proceeding, we are of opinion that the court of quarter sessions of Lycoming county had no jurisdiction. It is true that the act of April 15, 1867, P. L. 84, has enacted that a district accepting a poor person shall be liable to the removing district for costs and charges ‘in the same manner and to the same extent’ that they would have been had there been no appeal. It is supposed that this gives jurisdiction to the court to which there would have been an appeal. But this is a very violent construction of the words. How is that court to enforce its judgment? The act is silent. Surely not by mandamus to another county. The plaintiffs admit they must seek their remedy in the court of the county to which the removal has taken place, by their application to the court below to enforce the order of the court of Lycoming county. This shows that the proceeding to enforce the liability created by the statute must be in the court of the accepting district, to whose jurisdiction it is subject.”⁶

The Jurisdiction Cannot be Diverted by an Agreement.

“The plaintiff claims that at the time this order of relief was issued the pauper’s legal settlement was in the poor dis-

⁵ *Butler County v. Department of Public Charities of Allegheny City*, 158 Pa. 149.

⁶ *Williamsport v. Philadelphia*, 7 W. N. C. 222.

trict of Gibson township, and that within a few days after the issuing of said order of relief, the overseers of Gibson poor district entered into a contract with the overseers of Clifford poor district, in which the said overseers of Gibson bound Gibson poor district to pay for the support of said pauper. No order was ever taken out removing said pauper from the poor district of Clifford to the poor district of Gibson. Clifford poor district provided for said pauper for about nine months, when her husband, who had been absent, returned and took charge of her and the children.

"This suit was instituted by Clifford poor district to recover from Gibson poor district a balance of the money expended by Clifford poor district in supporting the pauper under this alleged contract.

"Upon the trial of the case the jury were directed to render a verdict for the defendant, for the reason that the court of common pleas had no jurisdiction of one of the questions involved. It had been settled by numerous cases, that the courts of quarter sessions of the peace have exclusive jurisdiction of the settlements of paupers; this was not controverted by the learned counsel for the plaintiff, but they claimed that the overseers of Gibson poor district investigated the question of the settlement of the pauper in this case, and admitted it to be in Gibson poor district and made a contract with Clifford poor district, whereby Clifford was to maintain the pauper and Gibson was to pay the expenses incurred by Clifford; that this investigation and contract fixes the liability of Gibson as the district legally chargeable with the support of the pauper, and, therefore, the question of place of legal settlement is not in controversy, and the court of common pleas have jurisdiction in this suit upon this alleged contract.

"In *Delaware Township v. Greenwood Township*, 66 Pa. 63, it was held by the supreme court that a promise by the overseers of a township could not divert the jurisdiction of the quarter sessions of the peace, that if the township was

not legally liable for the maintenance of the pauper, the promise of the overseers could not impose that responsibility upon it, and that consent cannot be given jurisdiction.

"Whether a pauper has a legal settlement in a district is a question of fact, which the overseers cannot fix or change by an agreement, and this fact is the foundation of the right of overseers to furnish maintenance or contract for the same, and in every question of contract for maintenance, when this fact has not been judicially determined, it becomes an issue, and that issue can only be determined in the court of quarter sessions of the peace."⁷

Jurisdiction.

The court of common pleas has no jurisdiction to make an order certifying the place of legal residence of a pauper lunatic, although the proceedings by which the pauper was declared a lunatic and committed to an asylum were in that court.

Hazen, P. J., of the common pleas, *inter alia*, says: "Had these proceedings been commenced in the quarter sessions, doubtless there would have been no trouble, but such was not the case." This was affirmed by the supreme court.⁸

In a controversy between a physician and a poor district to recover compensation for services rendered to a pauper, the court of common pleas has exclusive jurisdiction.

"On June 15, 1895, Dr. R. E. Redmond, a practicing physician of the borough of West New Castle, presented his petition to the court of quarter sessions, alleging that one Theodore Boone, a pauper of the borough of West New Castle had been taken sick and that his services were required; that he attended Mr. Boone for two or three days, and at his request the overseers took Boone to the Shenango Valley Hospital, where Dr. Redmond still continued in attendance

⁷ Clifford Poor District *v.* Gibson Poor District, 14 Pa. C. C. R. 327.

⁸ Butler *v.* Public Charities, 158 Pa. 149.

until his bill, amounting to \$23.50, was rendered, and asked the court for a rule on the poor district of the borough of West New Castle to show cause why they should not pay the aforesaid bill. Upon this petition a rule was granted and an answer filed, in which the poor district deny that they employed Dr. Redmond, and further, raise the question as to the jurisdiction of the quarter sessions court to pass upon this question. . . .

"All our poor laws are statutory, and by reading the laws, we find that the quarter sessions is given almost entirely absolute jurisdiction as to all matters pertaining to paupers and transactions arising from the care of paupers. And as has been said by our courts, we all lean to give the jurisdiction or interpret the act so that the jurisdiction should be exclusively in the quarter sessions court. But when we come to examine the decisions in this matter as to suits brought in the common pleas, we are led to believe that the quarter sessions has jurisdiction on all matters pertaining to paupers, as we stated above, except the case wherein a party not a pauper has a right of action against the poor district. In that case we are led to the conclusion that the common pleas has jurisdiction and is the proper court in which to proceed. . . .

"We find that the case of *Directors, etc., of Chester County v. Worthington*, 38 Pa. 160, where the common pleas was given jurisdiction, was a case where a physician in the case of emergency was called upon and did render assistance under circumstances similar to the one before us. He brought suit in the common pleas. The case was tried and taken to the supreme court, where the judgment for the plaintiff was affirmed. From this case we find several proceedings in the same line, by bringing the suits in the common pleas. . . . The same jurisdiction is permitted and recognized as the proper tribunal in *Directors of Chester County v. Maloney*, 64 Pa. 144. With this line of cases we are led to the conclusion that the common pleas has jurisdiction.

"Has the court of quarter sessions concurrent jurisdiction? We find a case, *Campbell, et al., Directors of the Poor of Fayette County v. Grooms*, 101 Pa. 481, where an action was brought in the quarter sessions; but this was by reason of a special act passed to give the quarter sessions jurisdiction in Fayette county over such cases.

"The fact that the act under which we are now proceeding and the former act prior to the Fayette county act, being substantially the same, we cannot arrive at any other conclusion than that it was necessary to pass a special act to give the court of quarter sessions jurisdiction in cases similar to this.

"With these facts before us we can arrive at but one conclusion, that the court of quarter sessions has not concurrent jurisdiction with the common pleas in cases similar to the one now under consideration. And while this conclusion is contrary to the trend of the court as to jurisdiction in pauper cases, yet we can arrive at no other conclusion, and the rule is therefore discharged."⁹

It is the duty of the officers of a poor district to provide for insane poor to be repaid by the specified relations.

A poor district having paid the expenses of maintaining a pauper in the state lunatic asylum, may recover the amount from the specified relations, the proceedings must be in the quarter sessions.¹⁰

In controversies between districts for the poor, the jurisdiction is in the quarter sessions. A promise by the overseers of one district to another cannot divest the jurisdiction—cannot give jurisdiction: *Chester v. Maloney*, 64 Pa. 144, recognized.¹¹

It was held that assumpsit would lie by one poor district against another for maintenance of a pauper belonging to the latter district. Where an insane pauper is committed to the state asylum and the county whose court committed him pays

⁹ *Redmond v. Poor District*, 18 Pa. C. C. R. 276.

¹⁰ *Wertz v. Bar County*, 66 Pa. 18.

¹¹ *Delaware v. Greenwood*, 66 Pa. 63.

the expenses of his maintenance there, it seems that the county is subrogated to the rights of the trustees of the asylum against the district of the pauper's settlement.¹²

Jurisdiction Under Act of 1846.

"Where a statute designates the tribunal and prescribes the form of proceeding for fixing the liability of a county for relief furnished a pauper, the remedy designated by the statute is the only remedy for the adjudication of the claim.

"Where a physician has rendered services to an alleged pauper in Fayette county, he is not, by virtue of the provisions of the act of April 16, 1846, Section 6, P. L. 348, entitled to sue the directors of the poor of said county in the common pleas for the value of his said services. His sole remedy is by petition to the quarter sessions."¹³

Act March 26, 1862, P. L. 178.

"The court of quarter sessions of Carbon county, in questions of settlement and removal of paupers, has jurisdiction only in such cases as arise within the county of Carbon and those districts of the county of Luzerne which are embraced within the Middle Coal Field poor district.

"Appeals from any other locality are to the court of quarter sessions of the county from which the pauper removed, and not elsewhere.

"On August 8, 1883, two of the aldermen of the city of Allentown and *ex-officio* justices of the peace, issued an order for the removal of Solomon Laras from the county of Lehigh to the Middle Coal Field poor district. The directors of Middle Coal Field appealed to the next court of quarter sessions of the peace of Carbon county. On March 12, 1884, the appellees moved for the dismissal of the appeal on the

¹² Danville and Mahoning Poor District v. Montour County, 75 Pa. 35.

¹³ Campbell et al. v. Grooms, 13 W. N. C. 368.

ground that no appeal lies to this court from an order of removal issued by justices of Lehigh county. This raises the question of jurisdiction. The contention of the appellees is that the appeal should have been taken to the quarter sessions of Lehigh county, according to the nineteenth section of the act of 1836.

"It is very clear that the appeal should have been made to the court of quarter sessions of Lehigh county, as directed by the general act of 1836, unless there be some other act allowing the appeal to the quarter sessions of Carbon county. The appellant contends that under the special act erecting the Middle Coal Field district out of parts of the counties of Carbon and Luzerne, the appeal was properly made to this court. By the act of March 26, 1862, P. L. 178, entitled 'An act to organize the Middle Coal Field district,' the borough of Hazleton and the township of Hazle and Foster, in the county of Luzerne, and the borough of Mauch Chunk and East Mauch Chunk, and the townships of Banks, Lausanne and Mauch Chunk, in the county of Carbon, were erected into a poor district under the name of the Middle Coal Field poor district, to be governed and controlled by three directors, to be elected by the people; and the offices of overseer of the poor in the several boroughs and townships composing the district were abolished, etc., and by the fifth section it is provided that "all suits against the said Middle Coal Field poor district, and all questions of settlement and removal of persons by or from whom a residence is claimed or denied therein, shall be prosecuted and adjusted in the proper courts of Carbon county.' The appellant contends that the act requires that all suits and all questions of settlement and removal of persons to and from said district must be prosecuted and adjusted in the courts of Carbon county, without regard to the place or county from or to which a pauper may be removed. As to the provision that all suits against said district shall be prosecuted in the courts of Carbon county, the act only follows the general rule, that actions against

municipal corporations are local and must be brought where they are located: *Oil City v. McAboy*, 74 Pa. 249; *Lehigh County v. Kleckner*, 5 W. & S. 181. As the Middle Coal Field poor district was erected out of part of the territory of Luzerne and part of Carbon, it was necessary to give the courts of one or the other jurisdiction in respect to all questions affecting that territory and the inhabitants thereof as a poor district. The district as respects the poor, is an entirety. Townships and boroughs composing the district are no longer separate poor districts. The reason for the law in respect to suits against the district evidently was to prevent conflict of jurisdiction between the court of Luzerne and Carbon, because such suits could only have been brought in courts of Luzerne in respect to the townships in that county, and in Carbon only in respect to the townships in that county; and as the separate township poor districts become extinguished on the erection of the Middle Coal Field poor district, there was a necessity that the local jurisdiction should be conferred upon the courts of one or the other county. By the act of 1836 a complete system was established for the whole state for the care of the poor and for the removal of such as became chargeable where they had no legal settlement, and an appeal is allowed from the order of removal to the court of quarter sessions of the county from which the pauper may be removed, and not elsewhere. Did the legislature in creating the Middle Coal Field poor district intend to make it an exception to the general law farther than to prevent conflict of jurisdiction between Luzerne and Carbon? We see the necessity of the fifth section as between Luzerne and Carbon, but there is no necessity or reason that all the other counties in the state should be subject to this special law, for if the contention of the appellant be correct, then every poor district in the state from which a pauper may be removed to the Middle Coal Field poor district will be drawn within the jurisdiction of the quarter sessions of Carbon county. I doubt not if such interpretation had been asserted

at the time the bill was on its passage universal objection would have been made by the other counties.

“Suppose another instance of the creation of a poor district from parts of two adjoining counties—e. g., Pike and Monroe, with a provision similar to the fifth section, giving the jurisdiction to the courts of Pike, and a pauper should be removed from that district to the Middle Coal Field poor district, to which court should appeal be taken? Carbon would say, We have jurisdiction under the act creating the Middle Coal Field poor district, and Pike would say, We have jurisdiction by the act creating our district. How should the question be settled? It is susceptible of easy solution by holding that the special act simply settles the question of jurisdiction as between the counties from whose territories the district was formed, and leaving the district with the cause for domestic trouble, as to jurisdiction, settled as provided against, subject to the general law. I do not know of any other poor district in the state formed of parts of two adjoining counties, but that it is possible we have the evidence in the case of the Middle Coal Field poor district.

“Among the rules given by Vattel for the interpretation of statutes is the following: Rule 24: “The reason of the law or treaty—that is, the motive that led to the making of it, is one of the most certain means of establishing the true sense, and great attention ought to be paid to it whenever it is required to explain an obscure, equivocal and undetermined point, or to make an application of them to a particular case. As soon as we certainly know the reason which alone has determined the will of him who speaks, we ought to interpret his words and to apply them in a manner suitable to that reason alone.’ Rule 34: ‘Though a thing appears favorable when viewed in one particular light, yet, if the propriety of the terms, in their full extent, lead to absurdity or injustice, their signification ought to be limited according to the rules above given.’ Rule 35: ‘If there flows neither absurdity nor injustice from the strict propriety of the terms, but a mani-

fest equity, or a great common utility requires a restriction, we ought to adhere to the most limited sense which the proper signification can admit, even in an affair that appears favorable in its own nature.' Now the reason for the fifth section in the act creating the Middle Coal Field poor district was to prevent confusion if not actual conflict of jurisdiction between the counties of Luzerne and Carbon, and the language may be interpreted as to limit it to that extent; and there certainly is manifest equity and common justice in interpreting the words in this limited sense, as thereby the general system established by the act of 1836 is unimpaired, and other counties are not, contrary to that system, drawn into the jurisdiction of this court. It seems to me that the intent of the legislature was that the jurisdiction of the court of Carbon county over said district, as a poor district, should simply be the same as if the district was entirely within the territorial limits of Carbon.

"I am aware that the reasoning which leads to the conclusion now announced would seem to require that where a pauper is removed from any township or borough in Luzerne county, outside of a district, into the district, and an appeal is taken, it should be to the court of quarter sessions of the peace of Luzerne county; but if so no harm or injustice is done to the district. . . . I may say that I do not consider this question of jurisdiction free from doubt, but the more I have examined and thought upon the question the more firmly I am of the opinion that the appeal in this case should have been to the court of quarter sessions of Lehigh county. The appeal is dismissed for the reason that this court has not jurisdiction of the case." ¹⁴

¹⁴ Middle Coal Field District v. Directors of Lehigh County, 4 Luz. Leg. Reg. 394.

REMARKS IN CONCLUSION.

A close study of the act of 1836, and its supplements, with the decisions of the courts construing them, will make it apparent that very little remains to be explained, and that our poor laws as a system are about as perfect as human ingenuity can make them.

The bulk of the litigation has been between the different township poor districts, and we are perfectly in accord with the opinion of the supreme court, in *Cascade Overseers v. Lewis Overseers*, 148 Pa. 333, where they say: "It is to be regretted that the legislature does not provide a uniform system for the care of the poor, and require each county in the state to erect a house for their accommodation. Under our present system, many of the counties are divided into as many poor districts as there are townships. This results in constant litigation between these small poor districts in regard to the settlement of paupers. Much of this litigation is unseemly, of a trifling character, and not creditable to the poor districts concerned. It is not too much to say that some districts spend almost as much money in litigation as they do in the support of the unfortunate poor. This would cease, to a great extent, if each county were charged with the support of its own poor."

At the session of the legislature of Pennsylvania, 1889, an act was passed, May 9, 1889, P. L. 140, entitled "An Act authorizing the governor to appoint a commission to revise and codify the laws relating to the relief, care and maintenance of the poor in the commonwealth of Pennsylvania."

A commission was accordingly appointed for that purpose, but no report was ever made, owing, we believe, to the death of one of the commissioners.

We cannot perceive that much would be gained by codifying the poor laws. They are, as we have already stated, as perfect a system as human ingenuity can make them; any radical alterations would necessarily require further construc-

tions. The principal objections to the system heretofore has been the frequent litigation between the smaller districts; this could be reduced to a minimum by adopting the suggestion of the supreme court above referred to, namely, compelling each county in the state to erect a house for the accommodation of the poor. It is true we have laws allowing the separate counties to erect poor houses, but they are not compulsory. On the contrary, it is left to the vote of the citizens of the county, and the consequence is that politics, envy, jealousy and a mistaken idea of economy delay if not defeat the enterprise. We must therefore patiently wait till the necessity of the case opens the eyes of the legislature, and the public in general, to the true economy of adopting the recommendation of the supreme court.

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Form of Order from two Justices of the Peace to Overseers (or Directors) of the Poor, to Take Charge of a Pauper who has not Gained a Settlement in the District.

County, ss:

To A. B. and C. D., the overseers of the poor of the district of _____ in the county of _____ (or to the directors of the poor and house of employment for the county of _____).

Whereas complaint has been made to us, two of the justices of the peace in and for the county of _____ aforesaid, that a certain E. F., on the _____ day of _____, A. D. 189____, came to the complainant's house in _____ aforesaid, and there fell dangerously ill, and that the said E. F. is a poor, impotent person and unable to provide for himself, and hath not gained a settlement in the said district. These are therefore to authorize and require you to receive the said E. F. forthwith into your care, and to make suitable provision for him, until he can be removed to the place of his last legal settlement.

Given under our hands and seals, at _____ aforesaid, the _____ day of _____, A. D. 189____.

JOHN BITTERS. [SEAL.]
PETER SMITH. [SEAL.]

Form of Order from two Justices of the Peace to Overseers or Directors to Take Charge of a Pauper who has Gained a Settlement in the District.

County, ss:

To (as in preceding form).

Whereas information has been given to the subscribers, two of the justices of the peace in and for said county, by A. B., of the township of , that E. F., of the same township, being the day of inst., was thrown from a wagon, and so much hurt that his life is despaired (or as the facts may be), and that the said E. F. is so poor as to be unable to procure the necessary assistance. You are hereby authorized and required to take charge of the said E. F. and to furnish him such medical and other relief as his distressed condition may call for, charging your expenses herein in your account against said district.

Given under our hands and seals, the day of ,
A. D. 1898.

JOHN DOE. [SEAL.]

RICH. ROE. [SEAL.]

Warrant to bring a Pauper before a Justice of the Peace, to Examine Him as to the Place of his last Legal Settlement.

County, ss:

The Commonwealth of Pennsylvania to P. H., constable of township.

Whereas complaint has been made to A. B., one of our justices of the peace in and for said county, by the directors of the poor and of the house of employment for the said county, that E. F. hath come to inhabit in the said district, not having gained a legal settlement there, and that the said E. F. is likely to become chargeable to the said directors, etc. These are therefore to require you to bring the said E. F. before the said A. B., and such other of the justices of the peace of the said county as may be present, to be examined concerning the place of his last legal settlement.

Given under the hand and seal of the said A. B., this
day of , A. D. 189 .

A. B. [SEAL.]

Notice from Justice of the Peace to Overseers, or Directors of the Poor of the District of —— to Appear and Show Cause why a Pauper not having a Legal Settlement in the District Should not be Removed Therefrom.

County, ss:

To P. Q. and R. S., overseers of the poor of the district of _____, in the county of _____, Greeting:

You are hereby notified and required to appear before me, and such other of the justices of the peace of the said county, as shall be at my office, No. _____, Street, in the city of _____, on _____, the _____ day of _____, A. D. 189____, at 10 o'clock A. M., to show cause why E. F., a pauper, should not be removed from said county of aforesaid.

Given under my hand and seal the _____ day of _____, A. D. 189____.

JOSEPH BROWN. [SEAL].

Order from two Justices of the Peace to Overseers or Directors of the Poor, for the Removal from the District of a Pauper who has not Gained a Legal Settlement Therein.

County, ss:

To A. B. and C. D., overseers of the poor of the district of _____, in the county of _____, and P. Q. and R. S., the overseers of the poor of the district of Z——, in the county of _____.

Whereas complaint hath been made to us, the subscribers, two of the justices of the peace in and for the said county of _____, by the overseers of the poor of the district of A——, that E. F. has lately come to inhabit in the said district of A——, not having gained a legal settlement therein, and that the said E. F. is likely to (or has actually) become chargeable to the said district of A——. We, the said justices, upon due proof and consideration had of the premises, do adjudge the same to be true; and so likewise adjudge that the place of the last legal settlement of the said E. F. is the district of Z——, in the county of _____. These are therefore to authorize and require you, the above-named A. B. and C. D., overseers, etc. (or as the case may be), at the expense of the said district of Z——, to remove and convey the said E. F. from the said district of A—— to the said district of Z——, in the county aforesaid, and to deliver

him, together with this order, or a true copy thereof, to the overseers of the same, who are hereby required to receive and provide for the said E. F. as a settled inhabitant thereof.

Given under our hands and seals the day of ,
A. D. 189 .

P. Q. [SEAL.]

L. M. [SEAL.]

Notice from Overseers of one District to Overseers of Another District of their Appeal from the Decision of two Justices of the Peace, in the Matter of the Removal of a Pauper to the Alleged Place of his last Legal Settlement.

County, ss:

To A. B. and C. D., overseers of the poor of the district of A—, in the county aforesaid.

You are hereby notified and informed that we, P. Q. and R. S., the overseers of the poor of the district of Z—, in the said county, have appealed to the next court of quarter sessions of the peace to be holden for said county, in the matter of the removal of E. F., a poor person, from the district of A—, aforesaid, to the district of Z—, aforesaid, and that the same appeal will be duly prosecuted at the next court to be holden as aforesaid.

Witness our hands this day of , A. D. 189 .

P. Q.

R. S.

Overseers of the Poor of the District of Z—.

Warrant of Justice of the Peace to Constable to Levy on and Sell Goods of a Person Chargeable for the Support of a Pauper, to Refund to Overseers of the Poor of another District their Claim for Costs and Charges on Account of said Pauper.

County, ss:

The Commonwealth of Pennsylvania, to O. P., the constable of the township of C—, in the county aforesaid, and to the keeper of the common jail of the said county.

Whereas an order was made of the day of , A. D. 18 , by two justices of the peace of the county of B—, for the removal of E. F., a poor person, from the district of Z—, in the said county of B—, to the district of C—, aforesaid; from which order for removal K. L., innkeeper,

of the said township of C—, did appeal to the court of quarter sessions of the peace of the said county of B—, giving notice to the overseers of the poor of the said district of Z—, according to law. And whereas the said court did, on the day of , determine such appeal in favor of the overseers of the poor of the said district of Z—, and did direct that the sum of dollars should be paid by the said K. L. to the overseers of the poor of the district of Z—, aforesaid, for the reasonable costs and charges, which decree the said K. L. hath neglected (or refused) to comply with. And whereas P. Q., one of the overseers of the poor of the said district of Z—, hath applied to M. N., one of the justices of the peace in and for said county of Y—, and hath furnished our said justice with a true copy of the order of the said court, for payment of such costs and charges, certified under the hand of the clerk of the said court. These are, therefore, to command you, the said constable, to levy the said sum of dollars by distress and sale of the goods and chattels of the said K. L. in your township, returning the overplus, if any, to him, the said K. L., after payment of the said sum, together with such legal charges as shall become due on the recovery thereof. If goods and chattels of the said K. L., of such value as to realize from the sale of a sum of money sufficient to pay the said costs and charges cannot be found, we command you to take the said K. L. to the common jail of the said county of Y—, and deliver him to the keeper thereof, who is hereby enjoined to receive and keep him in safe custody, without bail or mainprize, until he pay the costs and charges aforesaid.

Witness the said M. N., at of , in the county of Y—, this day of , A. D. 18 .
M. N. [SEAL.]

Supersedeas from two Justices of the Peace to Overseers of the Poor, to Revoke Order of Removal of a Pauper from one District to Another.

County, ss:

To the overseers of the poor of the district of Z—, in the county of , and to the overseers of the poor of the district of C—, in the county of .

Whereas upon the day of last past, an order was issued by the subscribers, two of the justices of the peace in and for the said county of , for the removal of F. G., a pauper, from the said district of Z——, in the county of , aforesaid, to the district of C——, in the said county of , and whereas it sufficiently appearing to us, the said justices, that the said order of removal as aforesaid hath issued improperly and erroneously: Therefore, we command you, the said overseers, that you altogether cease from any further prosecution of said order.

Given under our hands and seals, etc.

[SEAL.]
[SEAL.]

Warrant from two Justices of the Peace to Overseers of the Poor, to Levy upon the Goods of a Person who has Deserted His Wife (and Children), for a Sum to Support Her (or them), or for the Arrest of said Person.

County, ss:

The Commonwealth of Pennsylvania to A. B. and C. D., the overseers of the poor of the district of , in the county of .

Whereas it appears unto J. K. and L. M., two of our justices of the peace in and for said county, as well upon complaint and application of the overseers of the poor of the district of , aforesaid, as upon due proof upon oath before our said justices made, that E. F., of the district of , in the county of , tailor, hath separated himself without reasonable cause from his wife, G. F. (and deserted his two small children), leaving her (or them) a charge upon the said district: These are, therefore, to authorize and require you to take and seize so much of the goods and chattels, and to receive so much of the rents and profits of the real estate of the said E. F., in your district, as shall amount to the sum of dollars, that being the sum which, in the judgment of the said justices, is requisite and sufficient to provide for the wife of the said E. F. (and to maintain and bring up his said children). And if sufficient real and personal estate of the said E. F., for the purposes aforesaid, cannot be found in your district, then we authorize and require you to take the body of the said E. F., and bring him before the said justices on the day of

, A. D. 18 , at the office of J. K., in the township of aforesaid, and then and there make return of your proceedings herein.

Witness the said J. K. and L. M., justices aforesaid, this day of , 18 .

J. K. [SEAL.]

L. M. [SEAL.]

Warrant of Justice of the Peace to Township Collector, to Levy on Goods, etc., of a Person for the Amount of Poor Tax Assessed Against said Person.

County, ss:

The Commonwealth of Pennsylvania to P. K., collector of township rates and levies for the township of , in the county of .

Whereas by a rate of assessment duly allowed and laid by the overseers of the poor of the township aforesaid, upon the real and personal estates within said township, R. R., blacksmith, of the said township, was rated and charged the sum of dollars, which he refused (or neglected) to pay; and whereas the said overseers of the poor have issued their warrant, dated the day of , with a duplicate of the rates and assessments by them as aforesaid laid, authorizing and requiring the said P. K., collector as aforesaid, to demand and receive from every person in such duplicate named the sum wherewith such person stands charged:

These are, therefore, to authorize and empower you, the said P. K., to levy the said sum of dollars by distress and sale of the goods and chattels of the said R. R., giving ten days' public notice of such sale by written or printed advertisement. And in case goods and chattels sufficient to satisfy the same, with costs, cannot be found, these are to authorize you to take the body of the said R. R. and convey him to the jail of the said county, there to remain until the amount so charged, together with the costs, shall be paid or secured to be paid, or until he shall be otherwise discharged according to law; and for so doing this shall be your warrant.

Witness the said J. K., one of the justices, etc.

J. K. [SEAL.]

Form of Bond of Indemnity to Guardians of the Poor, on Settlement of a Bastardy or Desertion Case.

Know all men by these presents, that we, C. D., of _____, and E. F., of _____, are held and firmly bound unto "The guardians of the poor of the district of _____, in the county of _____," in the sum of _____ dollars, lawful money of the United States, to be paid to the said "The guardians of the poor of the district of _____," their certain attorney, successor or assigns, to which payment, well and truly to be made, we bind ourselves and each of us, and each of our heirs, executors and administrators, jointly and severally, firmly by these presents; [and we do hereby empower any attorney of any court of record to appear for us and each of us, and, after declaration filed for the above sum, thereupon to confess judgment or judgments against us and each of us, as of any time or term before or after the date hereof, and thereupon to issue execution for such sum or sums as shall, by affidavit filed in the said court, appear to be due by breach of the condition of this obligation, together with the costs of suit; and the said judgment or judgments shall afterward remain as a security for the performance of the said condition; and in case of any further breach of the said condition, execution shall issue thereupon in the same manner as before.] Sealed with our seals, dated the _____ day of _____, A. D. one thousand eight hundred and eighty-seven.

In Case of Bastardy.

Whereas a certain A. B. was delivered, on the _____ day of _____, A. D. 18____, of a male (or female) bastard child, and has made oath that the above-bounden C. D. is the father of said child, which has

In Case of Desertion.

Whereas the above-bounden C. D. has separated from his wife A. D. ("and deserted his minor children," as the case may be), without reasonable cause, and said wife (and children) has (or have) become chargeable to the guardians of the poor of the district of _____ aforesaid:

Now the condition of this obligation is such that if the

above-bounden C. D. and E. F., or either of them, their or either of their heirs, executors, or administrators shall and do, from time to time and at all times hereafter, fully and clearly acquit, free and discharge, or well and sufficiently save, defend, keep harmless and indemnify the guardians aforesaid, and their successors, and also the inhabitants of the said district, of and from all manner of expenses, damages, costs and charges whatsoever, which shall or may at any time hereafter arise, happen, grow or be imposed upon them, or either or any of them, for or by reason or means of the (*in case of bastardy*) lying-in of the said A. B., the birth, support or clothing, or the medical and funeral expenses of the said child (*in case of desertion*), separation of the above-bounden C. D. from his said wife A. D. (and his desertion of his minor children), and of and from all other actions, suits, troubles, charges, damages and demands whatsoever, touching or concerning the same, then the above obligation to be void; otherwise to stand, be and remain in full force and virtue.

C. D. [SEAL.]

E. F. [SEAL.]

Signed, sealed and delivered
in presence of

G. H.

J. K.

Form of Oath, on Warrant of Seizure for Desertion.

The Directors of the Poor and House of
Employment for the county of
v.
C. D.

County, ss:

O. P., being duly sworn according to law, doth depose and say, I am one of the directors of the poor and house of employment for the county of . The said C. D. hath separated himself without reasonable cause from his wife, A. D. (and deserted his minor children), leaving them a charge upon the said, The Directors of the Poor, etc., aforesaid. The said C. D. has property (if any property can be specified, here insert "consisting of "), which should contribute to the maintenance of the said A. D. (and the minor children of the said C. D.).

The facts as above set forth are true to the best of this deponent's knowledge and belief.

O. P.

Sworn and subscribed before us, two justices of the peace in and for said county, this day of , A. D. 18 .

G. H.

J. K.

Justices.

Form of Warrant of Seizure in Desertion.

County, ss:

The Commonwealth of Pennsylvania to the Directors of the Poor and House of Employment for the county of . Greeting:

Whereas it appears unto us, G. H. and J. K., Esqs., two of the justices of the peace in and for the said county, as well upon the complaint and application of the directors of the poor, etc., aforesaid, as upon due proof upon oath before us made, that C. D., late of the said county, hath separated himself without reasonable cause from his wife, A. D. (and deserted his minor children), leaving them a charge upon the directors of the poor, etc., aforesaid: These are, therefore, to authorize and require you to take and seize so much of the goods and chattels, rights and credits, and receive so much of the annual rents and profits of the lands and tenements of the said C. D. as shall raise and amount to the sum of dollars, that being the sum which, in the judgment of the said justices, is required and sufficient to provide for the said wife (and to maintain and bring up the said children); and for so doing this shall be your warrant.

Witness the said G. H. and J. K., justices aforesaid, at , in the county aforesaid, the day of , A. D. one thousand eight hundred, etc.,

[SEAL.]

[SEAL.]

Form of Notice of Levy, etc.

To C. D. (and others interested).

Please take notice, that by virtue of a warrant of seizure, issued by two justices of the peace in and for the county of , on oath of O. P., and complaint of the directors of the poor, etc., for the county of , and di-

rected to the said directors (a copy of which is hereto annexed), the said directors have seized and levied upon (here insert a list of the articles levied upon), which said warrant will be confirmed at the next court of quarter sessions for the said county, unless sufficient cause be shown to the contrary.

Q. R.,

Agent for the Directors of the Poor, etc.

January 18, 1887.

The said warrant of seizure and order of two justices of the peace will be called up for confirmation in the court of quarter sessions for the said county of _____, on _____, at _____ A. M.

H. S. H., Solicitor.

Form of Petition of the Directors of the Poor, etc., to Court, for Confirmation of Warrant.

The Directors of the Poor and of the House of Employ- ment for the county of v. C. D.	}	In the Court of Quarter Sessions of the Peace for the County of April Session, 1887. Sur warrant of Seizure in Desertion.
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To the Honorable the Judges of said Court:

The petition of the directors of the poor and of the house of employment for the county of _____, respectfully represents:

That C. D., late of the said county, has without reasonable cause separated himself from his wife, A. D. (and deserted his _____ minor children, naming them), leaving them a charge on your petitioners; that a warrant of seizure was issued on the _____ day of _____ A. D. 1887, by two justices of the peace of said county, on the oath of O. P. and complaint of your petitioners, directed to the said directors, and requiring them to take and seize so much of the goods and chattels and receive so much of the rents and profits of the lands and tenements of the said C. D. as should raise and amount to the sum of _____ dollars, that being the sum which, in the judgment of the said justices, was required and sufficient to provide for the said wife (and maintain and bring up the said children); that by virtue of the said warrant your petitioners have seized and levied upon certain (here insert the articles levied upon), as will appear by the said war-

rant and their return to the same, at present of record in this court. Your petitioners, therefore, pray your honors to confirm the said warrant, and to make such other and further order as the case may require; and your petitioners will ever pray, etc.

H. S. H.,
Solicitor for Petitioners.

Petition of Directors, etc., in Desertion, Defendant Being Bound Over.

To the Honorable the Judges of the Court of Quarter Sessions, etc., for the County of

Of April Sessions, 1887.

County, ss:

The petition of the directors of the poor, respectfully represents: That C. D., late of said county, has without reasonable cause separated himself from his wife, A. D. (and deserted his minor children), leaving them a charge on your petitioners.

Your petitioners therefore pray your honors to order the payment of such sums of money as may be reasonable for the maintenance of said wife (and children), agreeably to the act of assembly in such case made and provided, and your petitioner will ever pray, etc.

H. S. H.,
Solicitor for Petitioners.

Form of Bond to Directors of the Poor, in a Bastardy Case, on Order of Court.

Know all men by these presents, That we, A. B., C. D. and E. F., all of the county of _____, are held and firmly bound to the directors of the poor and house of employment for the county of _____, in the sum of five hundred dollars, to be paid to the said the directors of the poor and house of employment for the county of _____, or to their certain attorney, successors or assigns. To which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals,

and dated this day of , A. D. one thousand eight hundred and eighty-

Whereas, a female bastard child has been begotten and born of the body of C. K., of the township of , in the county aforesaid,

And whereas the above-bounden A. B. was, at the Sessions, A. D. 1887, of the court of quarter sessions of said county, convicted of having begotten the said bastard child upon the body of the said C. K., and was sentenced by the said court to pay for the maintenance of such child dollars per week from its birth until it shall be seven years of age, together with fifteen dollars for lying-in expenses of the said C. K., and to give security to the said the directors of the poor, etc., in the sum of five hundred dollars for the performance of said order of maintenance.

Now the condition of this obligation is such that if the above-bounden A. B., his heirs, executors and administrators, or any of them shall and do from time to time and at all times hereafter, well and sufficiently save, defend, keep harmless and indemnify the said the directors of the poor, etc., of and from and against all expenses, costs, charges and damages whatsoever, which shall or may hereafter accrue for or by reason of the birth, support, maintenance, care, education or bringing up of said bastard child, and of and from and against all actions, suits, troubles and demands whatsoever touching and concerning the same, then this obligation shall be void, or else to be and remain in full force and virtue.

A. B. [SEAL.]
C. D. [SEAL.]
E. F. [SEAL.]

Sealed and delivered in the presence of

Oath of Overseer of the Poor.

You do , that you will support the constitution of this commonwealth, and perform the duties of the office of overseer of the poor with fidelity.

Indenture of Apprenticeship for a Girl, by Overseers of the Poor.

This indenture, made the day of , in the year of our Lord one thousand eight hundred and ninety-eight, witnesseth: That John Smith and William Brown, overseers

of the poor of the county of Northampton, have put and placed, and by virtue of an act of this commonwealth, entitled "An act for the relief of the poor," do hereby, with the approbation and consent of James Price and John Dunn, Esquires, two of the justices of the peace for said county, put and place Ellen White, a poor child of the township of Plainfield, apprentice to Joseph Cole, of the same place, with him to dwell and serve from the day of the date hereof until the full end and term of seven years; during all which term the said Ellen White her said master shall faithfully serve, in all lawful business, according to her power and ability, and honestly and obediently in all demean and behave herself towards her said master during the said term; and the said Joseph Cole doth covenant and agree for himself, his executors and administrators, to and with the said John Smith and William Brown, overseers as aforesaid, and their successors for the time being, and every of them, by these presents, as follows: That he, the said Joseph Cole, the said Ellen White shall and will teach and instruct, or cause to be taught and instructed, in sewing, knitting and housewifery, and the other usual branches of a common-school education, and shall and will, during the said term, find, provide and allow her sufficient meat, drink, apparel, lodging and washing, and all other necessities; and also, shall and will so provide for the said Ellen White, that she be not in any wise a charge or chargeable to the said township, or to the inhabitants of the same, but from all charges concerning her shall and will save the said township, and the inhabitants thereof, harmless and indemnified during the said term; and at the expiration thereof, shall and will, at his own charge, give and allow the said Ellen White two suits of apparel, one whereof shall be new.

In witness whereof the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

[SEAL.]
[SEAL.]
[SEAL.]

Signed, sealed and delivered in presence of

Approbation of the Apprenticeship of Paupers.

We, the subscribers, justices of the peace, in and for the county of _____, do hereby approve and consent to the

execution of the indentures of apprenticeship in the case of the within named Ellen White, a pauper, the term of which is to expire on the day of , A. D. one thousand nine hundred and fifteen.

Witness our hands and seals this sixth day of July, A. D. 1898.

[SEAL.]

[SEAL.]

Form of Indenture Used by Directors of the Poor of Northampton County.

This Indenture, Made the day of , A. D. one thousand eight hundred and , between , directors of the poor and house of employment of the county of Northampton, in the commonwealth of Pennsylvania, of the one part, and , of the other part, Witnesseth, That the said directors of the poor and house of employment aforesaid, have put and placed, and by virtue of the power and authority vested in them by an act of the general assembly of the said commonwealth, passed the 11th day of March, A. D. 1837, entitled "An act to provide for the erection of a house for the employment and support of the poor of the county of Northampton, and for other purposes," do hereby put and place , an apprentice, to dwell with and serve the said , executors or administrators, from the day of the date hereof, for and during, and to the full end and term of next ensuing, in all lawful and reasonable service: And the said executors or administrators, during the said term, shall find and provide for the said apprentice sufficient meat, drink, apparel, washing and lodging, and all other necessities, and shall teach, or cause to be taught, the art and mystery of . And during the said term shall give common schooling, one-half of which after attains the age of fourteen years, and when free, two common suits of clothes, one of which shall be new.

This indenture not to be assignable without the consent of the directors of the poor and house of employment aforesaid, for the time being.

In Witness whereof, the said parties to these presents have

hereunto interchangeably set their hands and seals the day and year above written.

Sealed and delivered in the presence of,

[SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]

You are requested at the expiration of this child's time to come forward and satisfy the directors that the terms of the Indenture have been complied with.

Another Form of Indenture.

This Indenture, made the day of , in the year of our Lord one thousand eight hundred and , between , directors of the poor and house of employment of the county of Northampton, in the commonwealth of Pennsylvania, of the one part, and , of the other part, Witnesseth, that the said directors of the poor and house of employment aforesaid, have put, and by these presents do put, , an apprentice, to dwell with and serve the said , an apprentices, from the day and date hereof, for and during and to the full end and term of years, months and days, next ensuing, in all reasonable service. And the said for executors and administrators, hath covenanted, promised and agreed, and by these presents doth covenant, promise, and agree, to and with the said directors of the poor and house of employment aforesaid, that the said executors or administrators, shall and will, during all the term aforesaid, find and provide for the said apprentice good and sufficient meat, drink, apparel, washing and lodging; and shall and will teach, or cause the said apprentice to be taught, the art and mystery of , and during the said term shall and will give the said apprentice quarters' day schooling; and shall pay to the directors of the poor of Northampton county in trust for said apprentice, the following sums of money, viz.: When the said apprentice is twelve years of age, five dollars; when fourteen years of age, five dollars, and ten dollars annually thereafter, until the expiration of this indenture; and shall provide the said appren-

tice, when free, with two suits of clothes, one whereof shall be new; and shall and will not, without the consent of the said directors of the poor and house of employment, assign or transfer the said indenture, or hire out or give up any part of the term of the said apprentice, and shall and will, yearly and every year, during the continuance of the said term inform the said directors of the poor and house of employment of the conduct and health of the said apprentice; and as often as he may be requested, shall and will permit the visiting agent, or any other properly deputed officer of the said directors of the poor and house of employment, to visit the said apprentice and confer with him alone; and for breach of any of these conditions this indenture shall, at the option of the said directors of the poor and house of employment, be void.

And at the expiration of the said term, the said shall and will satisfy the said directors of the poor and house of employment that the terms of this indenture have been complied with. Should the apprentice leave before the term of the indenture shall have expired, the moneys paid shall be forfeited to the said directors of the poor and house of employment.

In witness whereof, the said directors of the poor and house of employment have caused their corporate seal to be affixed to these presents; and the said _____, and the said directors _____, have set their hands and seals to the same, the day and year above written.

[SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

Sealed and delivered in the presence of

Order for the Reception of an Insane Patient.

I, the undersigned, hereby request you to receive _____, an insane person, as a patient into your hospital, believing that such detention is necessary for his _____ benefit. Subjoined is a statement respecting the said

(Signed)
Occupation,

•

Degree of relationship (if any) or other circumstance of connection with the patient :

Dated this day of one thousand eight hundred and ninety- .

To the trustees of hospital for insane, at

STATEMENT.

If any particulars in this statement be not known, the fact to be so stated.

1. Name of patient, with Christian name at length,
2. Sex and age,
3. Residence for the past year, or so much thereof as is known,
4. Occupation, trade or employment,
5. Parents, if living,
6. Husband or wife,
7. Children.
8. Brothers and sisters, and the residences of each of these persons,
9. If not more than one of these classes is known, the names and residences of such of the next degree of relations as are known,
10. A statement of the time at which the insanity has been supposed to exist, and the circumstances that induce the belief that insanity exists,
11. Name and address of all medical attendants of the patient during the last two years,

Signed,

When the person signing the statement is not the person who signs the order, the following particulars concerning the person signing the statement are to be added, viz. :

Occupation and residence,

Degree of relationship, if any, or other circumstances of connection with the patient,

Certificate of Physicians.

We, the undersigned, residents of Pennsylvania, hereby certify that we have, within one week prior to the respective dates hereinafter mentioned, at , in the county of , separately examined , of , and do verily believe that the said

is insane, and that the disease is of a character which in our opinion requires that the person shall be placed in a hospital or other establishment where the insane are detained for care and treatment.

We further certify that we have been actually in the practice of medicine for at least five years, and that we are not related by blood or marriage to the said , nor in any way connected as a medical attendant or otherwise with the hospital or other establishment in which it is proposed to place the aforesaid.

Signed, M. D.

Residence,

Dated this day of , one thousand eight hundred and ninety-

Signed, M. D.

Residence,

NOTE.—The certificate must be signed by at least two physicians, and made within one week of the examination of the patient, and within two weeks of the admission of the patient, and shall be duly sworn to or affirmed before a judge or magistrate of the commonwealth of Pennsylvania, and the county where such person has been examined, who shall certify to the genuineness of the signatures and to the standing and good repute of the signers.

And any person falsely certifying as aforesaid, shall be guilty of a misdemeanor and also liable to party aggrieved.—*Lunacy Law of 1883.*

Certificate of Magistrate or Judicial Officer.

I, , a (judge or magistrate of county, of Pennsylvania, do certify that the foregoing certificate was duly sworn (or affirmed) to before me by the above-named and on this day of A. D. , and that the signatures thereto are genuine, and that the said physicians are of good repute and standing.

Witness my hand and seal.

[SEAL.]

Bond.

Whereas of , of the county of , has been admitted a patient in the state hospital for the insane of the southeastern district of Pennsylvania, we , the directors of the poor of the county of , in behalf

of the inhabitants of said county, do hereby promise to pay to the trustees of the state hospital for the insane of the south-eastern district of Pennsylvania, or to the treasurer of said hospital, or his successor in office, the sum of _____ dollars and _____ cents per week, for board, clothing and treatment of _____, so long as _____ shall continue a patient in said hospital, and to remove _____ from said hospital whenever the room occupied by _____ shall be required by the trustees, or their duly authorized officers of said hospital; and for reasonable charges in case of elopement, and funeral charges in case of death.

Payments to be made quarterly, with interest on each bill from and after the time it becomes due.

Witness our hands this _____ day of _____, A. D. 189 _____.

Directors of the Poor of _____

Petition for the Adoption of a Child Without Parents, Under the Act of May 19, 1887, P. L. §125. P. & L. Dig. 111, § 1.

To the Honorable the Judges of the Court of Common Pleas, etc.

The petition of John Smith, of said county, respectfully represents: That he is desirous of adopting as one of his heirs Ellen Woodward, a child of Simon Woodward and Mary his wife, late of said county, now deceased, and that he will perform all the duties of a parent to the said child. He further represents, that the said Ellen Woodward has become a charge to the directors of the poor of said county, and that their consent to such adoption is evidenced by their joining in this petition (if one of the parents survives, he or she should also join in the petition). Your petitioner therefore prays the court to decree that the said Ellen Woodward may assume the name of the petitioner, viz.: Ellen Smith, and have and enjoy all the rights of a child and heir of the petitioner, and be subject to the duties of a child. And he will pray, etc.

(The petition should also be accompanied by certificates or affidavits satisfying the court as to the respectability of the petitioner.)

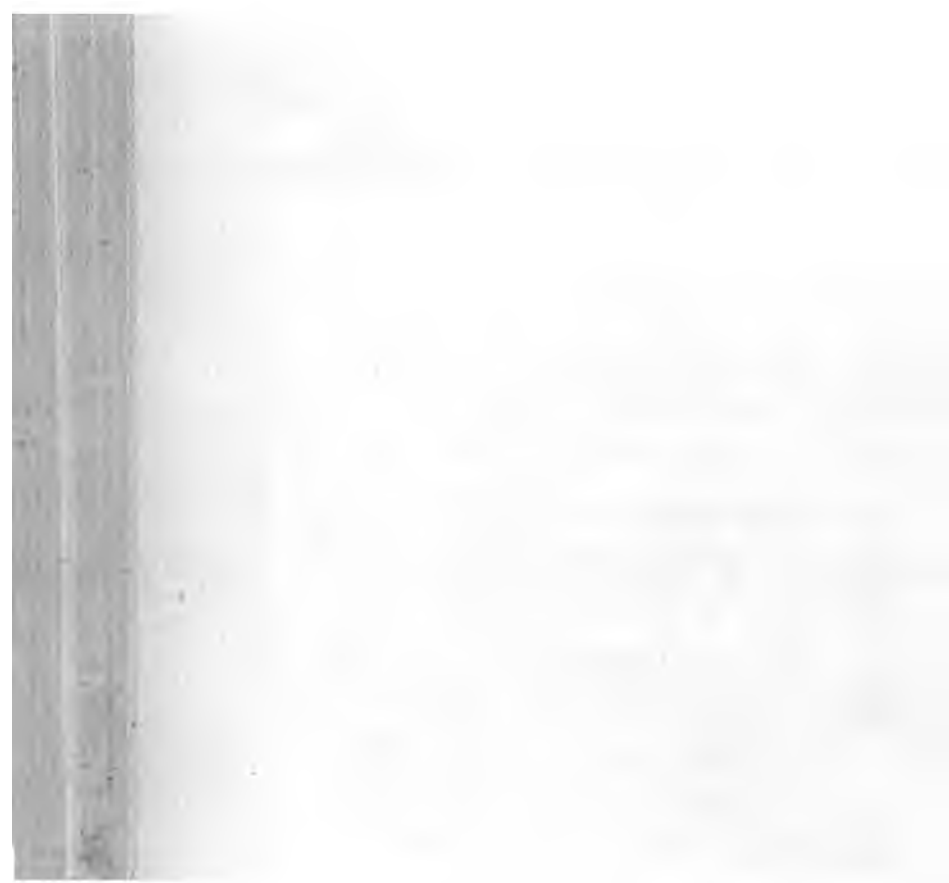


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